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Fifth Annual Meeting

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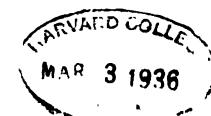
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CONSTITUTION OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION

ARTICLE I—NAME

This Association shall be known as the American Political Science Association.

ARTICLE II—OBJECT

The encouragement of the scientific study of Politics, Public Law, Administration and Diplomacy.

The Association as such will not assume a partisan position upon any question of practical politics, nor commit its members to any position thereupon.

ARTICLE III—MEMBERSHIP

Any person may become a member of this Association upon payment of Three Dollars, and after the first year may continue such by paying an annual fee of Three Dollars. By a single payment of Fifty Dollars any person may become a life member, exempt from annual dues.

Each member will be entitled to a copy of all the publications of the Association issued during his or her membership.

ARTICLE IV—OFFICERS

The officers of this Association shall consist of a President, three Vice-Presidents, a Secretary and a Treasurer, who shall be elected annually, and of an Executive Council consisting ex-officio of the officers above mentioned and fifteen elected members, whose term of office shall be three years. These elected members shall be divided into three groups of five each, the terms of office of members of one of such groups expiring each year.

All officers shall be nominated by a Nomination Committee composed of five members appointed by the Executive Council, except that the officers for the first year shall be nominated by a committee of three to be appointed by the chairman of the meeting at which this Constitution is adopted.

All officers shall be elected by a majority vote of the members of the Association present at the meeting at which the elections are had.

ARTICLE V—DUTIES OF OFFICERS

The President of the Association shall preside at all meetings of the Association and of the Executive Council, and shall perform such other duties as the Executive Council may assign to him. In his absence his duties shall devolve successively upon the Vice-Presidents in the order of their election, upon the Secretary and the Treasurer.

The Secretary shall keep the records of the Association and perform such other duties as the Executive Council may assign to him.

The Treasurer shall receive and have the custody of the funds of the Association, subject to the rules of the Executive Council.

The Executive Council shall have charge of the general interests of the Association, shall call regular and special meetings of the Association, appropriate money, appoint Committees and their chairmen, with appropriate powers, and in general possess the governing power in the Association, except as otherwise specifically provided in this Constitution. The Executive Council shall have the power to fill vacancies in its membership occasioned by death, resignation or failure to elect, such appointees to hold office until the next annual election of officers.

Five members shall constitute a quorum of the Executive Council, and majority vote of those in attendance shall control its decisions.

Ten members shall constitute a quorum of the Association and a majority vote of those members in attendance shall control its decisions.

ARTICLE VI—RESOLUTIONS

All resolutions to which an objection shall be made shall be referred to the Executive Council for its approval before submission to the vote of the Association.

ARTICLE VII—AMENDMENTS

Amendments to this Constitution shall be proposed by the Executive Council and adopted by a majority vote of the members present at any regular or special meeting of the Association.

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WHITE, ELIZABETH B., Hotel Racine, Columbus, Ga.
WHITE, J. LEROY, 2400 W. North Ave., Baltimore, Md.
WHITMORE, CHESTER W., 134 E. Main St., Ottumwa, Ia.
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WILGUS, JAMES ALVA, State Normal School, Platteville, Wis.
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WOODBURN, JAMES ALBERT, Indiana State University, Bloomington, Ind.

WOODHOUSE, EDWIN J., Law Building, Norfolk, Va.

WOODIN, G. W., State Normal School, Fredonia, N. Y.

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YOUNG, JAMES T., University of Pennsylvania, Philadelphia, Pa.

REPORT OF THE TREASURER FOR THE YEAR 1908

RECEIPTS

Fees, life membership.....	\$300.00
Annual dues.....	1911.00
Publications sold.....	367.43
Advertisements.....	45.00
Subscriptions to the Review.....	131.70
	<hr/>
Total receipts to December 30, 1908.....	\$2755.13
Balance on hand December 30, 1907.....	116.02
Loan.....	450.04
	<hr/>
	\$3321.19

EXPENDITURES.

Printing and stationery.....	\$2439.62
Preparing "copy" for the Review (Legislative Notes and Lists of Government Publications).....	95.00
Clerical assistance to the Secretary and Managing Editor of the Review.....	409.30
Postage, expressage and miscellaneous office expenses of the Secretary, and Managing Editor of the Review.....	235.69
Committee on Instruction in Political Science.....	52.50
	<hr/>
Total expenditures.....	\$3232.11
Balance on hand December 30, 1908.....	89.08
	<hr/>
	\$3321.19

Submitted December 30, 1908.

W. W. WILLOUGHBY.

Audited and found correct:
JOHN H. FAIRLIE.

REPORT OF THE PROCEEDINGS
of the
FIFTH ANNUAL MEETING
of the
American Political Science Association

By the Secretary

The Fifth Annual Meeting of the American Political Science Association was held at Washington, D. C., and Richmond, Va., December 28-31, 1908. At the same time and places the annual meetings were held of the American Historical Association, the Bibliographical Society of America and the Mississippi Valley Historical Association. Sessions of the Political Science Association were held in Washington, Monday afternoon and evening and Tuesday morning, Mr. Bryce's presidential address being delivered Monday evening. Tuesday afternoon, by special train, the members of the various Associations went to Richmond, arriving there in the late afternoon. That evening a joint session was held with the Historical Association, its President, Professor George B. Adams, delivering the annual address, the topic selected being History and the Philosophy of History. The sessions of the Political Science Association, lasting until Thursday evening, were devoted to the reading and discussion of papers relating to the Increase of Federal Influence and Power in the United States, American Colonial Problems as Revealed in the Light of Ten Years' Experience in Porto Rico and the Philippines, Recent Tendencies in State Constitutional Development, Active Agencies in the Betterment of Municipal Administration, International Law, and Instruction in American Government in the Secondary Schools.

The discussion of this last subject was based upon a report of a committee read by its chairman, Professor W. A. Schaper of the University of Minnesota, which report was based upon a careful investigation carried on for several years of the methods of instruc-

tion employed in our secondary schools in the teaching of American Government, and especially of the extent to which that subject is taught as an independent study, or as an adjunct to history. The committee emphasized the need of having American Government taught as an independent subject in the secondary schools, and the Association at its annual business meeting unanimously approved this recommendation.

The Secretary reported a large increase in the membership of the Association, the number of members having increased in two years from approximately four hundred to nearly eight hundred.

An amendment to the Constitution was adopted, increasing the number of elected members of the Executive Council from ten to fifteen, and the term of their office from two to three years, provision being made for the retirement of five members each year.

The officers elected for the year 1909 are as follows: President, A. Lawrence Lowell, of Harvard University; First Vice-President, T. S. Woolsey, of Yale University; Second Vice-President, Paul S. Reinsch, of the University of Wisconsin; Third Vice-President, Henry Jones Ford, of Princeton University; Secretary and Treasurer, W. W. Willoughby, of Johns Hopkins University. The elected members of the Executive Council, including those holding over from last year, are as follows: J. H. Latané, C. E. Merriam, J. W. Jenks, F. J. Goodnow, Isidor Loeb, Stephen Leacock, Albert Shaw, F. N. Judson, Walter L. Fisher, Milo R. Maltbie, W. B. Munro, L. S. Rowe, J. S. Reeves, W. A. Schaper, B. E. Howard.

The Secretary reported that no action had been taken by the Carnegie Institution with reference to the memorial presented by the Association, urging that there be established in that Institution a department for research in Political Science. This memorial is printed in this volume of the *Proceedings*.

Professor A. L. Lowell and Professor W. B. Munro were appointed a committee with power to associate with themselves additional persons for the preparation of the programme for the next annual meeting.

Socially the meeting was a most enjoyable one. Monday evening a reception to the Associations was given at the British Embassy by Mr. and Mrs. Bryce. Tuesday noon there was a luncheon at the New Willard Hotel, in Washington; Tuesday evening a reception in the parlors of the Hotel Jefferson in Richmond; Wednesday afternoon a reception at the Woman's Club of Richmond, and Thursday evening a New Year's Eve celebration at the Westmoreland Club.

On Friday there was an excursion to Charlottesville and the University of Virginia.

New York City was chosen as the place for the next annual meeting of the Association, to be held during Christmas week, at which time and place the American Historical and American Economic Associations also will hold their annual meetings.

Letter and Memorial to the Carnegie Institution with Reference to the Establishment in that Institution of a Department of Research in Political Science.

February 5, 1908.

MR. ROBERT S. WOODWARD,

President of the Carnegie Institution, Washington, D. C.

DEAR SIR: In December, 1903, was organized the American Political Science Association, the aim of which, as stated in its constitution is "The scientific study of Politics, Public Law, Administration, and Diplomacy." Its purpose is thus, by a coördinated effort, to advance the scientific study of matters political in this country in a manner similar to that in which the American Historical Association and the American Economic Association have so greatly promoted research and exact thinking in their respective fields. The membership roll of the Association already includes between six and seven hundred names. The publications of the Association consist of an annual bound volume of *Proceedings* containing the papers read at its annual meetings, and a quarterly *Review* now in its second volume. Honorable James Bryce, British Ambassador, is the present President of the Association. Former Presidents have been Professor F. J. Goodnow, Dr. Albert Shaw and Hon. F. N. Judson.

The governing body of the Association is the Executive Council. At the last meeting of this body, held in Madison, Wis., December 30, 1907, was discussed the chief problem which political scientists in this country have to meet; namely, that of securing greater efficiency in the collection of material and a more complete coöperation among investigators. As a result of its deliberations, the Council appointed a committee, composed of the undersigned, charged with the duty of laying before your Institution the present imperative needs of scholars in the political field and urging upon you the establishment of a Department of Research in Political Science.

In performance of the duty thus laid upon it, the undersigned submit the Memorial which is enclosed herewith.

(Signed) ERNST FREUND, University of Chicago.

PAUL S. REINSCH, University of Wis.

LEO S. ROWE, University of Penna.

ALBERT SHAW, New York City.

MUNROE SMITH, Columbia University.

J. H. WIGMORE, Northwestern University.

W. W. WILLOUGHBY, Johns Hopkins
University.

*Memorial of the American Political Science Association to the Trustees
of the Carnegie Institution with Reference to the Establishment of
a Department of Research in Political Science.*

The study of political and legal phenomena, important wherever civilized society exists, may be said to impose itself as a matter of necessity in a country the institutions of which are founded upon a presupposition of an intelligent and well-informed political consciousness. The formation of such a consciousness must ultimately depend upon an accurate knowledge of political facts and a scientific analysis and synthesis of them.

In political science, as in the natural sciences, progress can result only from a continuous succession of effort. Each investigator must be able to make use of the facts determined by his predecessors and build upon them. The necessity of such successive, continued effort is now being clearly recognized by scholars in the field of political science. Until recently the tendency has been to deal with political problems upon an *a priori* or subjective basis, rather than upon a foundation of ascertained and logically related facts. Because of insufficient exact data previously obtained, each investigator and writer has been forced in large measure to found his conclusions upon such scanty material as he himself has been able, by individual effort, to gather.

To obtain a sufficient range of political facts for reliable induction, is in very many cases a task beyond the power of the individual investigator. Not only are the activities and operations of political life extremely complex, but they occur in a great variety of forms, the diversities being due to local conditions or to special chains of

causation. *Yet these facts must be known if scientific political work is to be done.* Not only, then, will the pure science of politics be given a great impetus by the establishment of a department of research, but the results obtained therefrom cannot fail to clarify current ideas of journalists, legislators, and citizens in general.

Our political institutions and the experiments in legislation which we are undertaking in this country are of profound interest to the entire world, not only on account of the prominence of the country itself, but because of the inherent importance of the political problems involved. The investigators of political matters in the United States therefore owe a duty to the scholars of the world to set before them complete data and reliable studies upon which may be based a safe judgment as to the character and tendency of our political institutions.

Certain important studies of our political life based on the positive or inductive method of investigation have already been produced by American scholars. The scientific interest of these problems has received a great impulse of late. Nearly all of our universities have established special schools or departments of political science; a national association has been formed to promote the study of political problems; while other societies—the American Society of International Law, the American Bar Association, and the Association of American Law Schools—have interested themselves in special divisions of the subject. At present all of the most active investigators feel the need of the collection of materials on a larger scale and of the centralization of effort in some institution which will serve as a clearing house for research.

The possible work of a Department of Political Science Research—as the experience of the Carnegie Institution demonstrates—falls into two main divisions. I. The collection and rendering known and accessible of source materials; and II. The guidance of coöperative efforts in monographic studies.

Of these two services the first is much the more important. In the collection and rendering known and accessible of source material, the Department should, in many instances, at least, itself do the work. With reference to monographic studies, its services would more properly be by way of coördinating efforts, preventing duplication, and furnishing bibliographical and other assistance to individual investigators.

I. The Collection and Rendering Known and Accessible of Source Material.

A. Guides to Documentary Material: There is needed a general guide to the permanent sources of statistical and documentary material of a political interest. Not only should there be a complete guide to the reports regularly issued by Federal, State, and City departments, but there should also be pointed out the individual officials from whom specific information can be obtained. This guide should also include complete references to statistical collections and to the reports of legislative committees, and to the reports of associations existing for public purposes, such as the Illinois Legislative Voters' League, and various other organizations which exist for the purposes of political action and information. The vast body of official publications can be rendered useful to the political student only through such a general guide specifically prepared from this point of view.

B. Index Digests of Constitutions, Laws, Charters, and Ordinances. There should be a complete index digest of state constitutions, federal and state legislation, city charters and ordinances, and important administrative acts.

A complete digest of state constitutions, containing also pertinent judicial annotations, is a great desideratum. The compilation made for the New York Constitution Convention of 1894 is inadequate for present purposes, but indicates the need for such work.

The indexing of state legislation is now partially carried out by such bodies as the New York and the Wisconsin Legislative Libraries, but a great deal might be done in the coördination of efforts, and in the more specific digesting of legislation and legislative bills upon certain topics, such as, for instance, suffrage and elections, the police power, etc.

Only the barest beginning has been made with respect to city charters and ordinances. There is an imperative need at the present time for a digest of the existing mass of administrative and legislative material relating to city government. There is required in the first place a digest of the principal city charters, carefully annotated. Such a digest might also contain an outline of the charters of the larger cities of the world and of minor cities where important variations are found, such as Galveston, Des Moines, and Newport. The beginning of such a digest was made for the use of the Chicago Charter

Commission in 1906. Again there should be prepared compilations of city ordinances of important cities covering the various subjects of municipal administration. There should also be a special digest of state legislation relating to city government.

A study of the growth of administrative activities of the federal and state governments, which have undergone a remarkable development during the last few decades, requires a thorough indexing and digesting of the material containing administrative laws, rules and regulations. Not only has departmental administration itself expanded to a remarkable degree during recent years, but an entire series of new organs has been added, especially in the states, in the numerous commissions which have been created for special administrative purposes. In these commissions are often united legislative, executive, and judicial functions. They have already become such an important instrumentality in American government that the scientific study of their organization and methods of action on the broadest basis has become absolutely necessary.

In this connection there should be pointed out the special need for a digest of the *quasi-judicial decisions* of executive officers and administrative bodies. Very little attention has been hitherto given to such important documentary material as the opinions of attorney-generals, of state commissioners, and of administrative commissions. This material should first be rendered accessible by a thorough guide to these various series of reports and then subjected to a scientific analysis for the purpose of rendering it useful to students, legislators, and administrative officials.

To a certain extent the political scientist and jurist may depend upon such agencies as the Congressional Library and the various state legislative reference departments for the performance of portions of the aforementioned task. There should, however, be a central agency which could, as an intermediary, prevent the overlapping of collections and which could also assist the individual investigator in getting needed information by the shortest route.

C. *Political Statistics.* The statistical agencies of the nation and the states already supply a great abundance of material useful to the investigator in politics. A central institution of research could coöperate with the statistical officials to the end of rendering these collections and compilations more useful for scientific purposes, and might also induce these departments to undertake new investigations by which developments not yet touched upon would be elucidated.

It is highly desirable that there should be a further development of election statistics. It is impossible to reach an accurate view of the detailed workings of our institutions without specific statistical information concerning elections, the participation of voters, and especially of women and negroes in districts where the suffrage is granted to them.

D. *Judicial Statistics.* Another important field is that of judicial statistics. Such statistics contain a wealth of instructive material of a type that ought to be available to the student and publicist. The various classes of cases brought before the courts, the disposal of these cases, the facts regarding bankruptcy, divorce, and criminal trials, the judgments rendered, the length of trials, the difficulties in securing juries, the frequency with which various writs are asked for and granted, the number of cases carried to a superior court, the percentage of reversals and for what reasons—all such facts might be tabulated in a statistical form. They are necessary to a proper understanding of the workings of the American judicial system, and would have an important bearing on the development of our civil and especially our criminal procedure.

E. *The Technical Problem of Legislation.* There is a growing conviction of the need of placing upon a more scientific basis legislative activity in its more technical aspects, that is to say, the giving of legislative policies the best statutory form. To bring this about two things are essential.

First, the study of legislative methods pursued in each state together with their historical development, with special reference to the administrative aspects of statutes; special and local legislation, the delegation of legislative powers, means of execution and enforcement, etc.

Second, the study of the operation of statutes enacted under the police power with a view to discovering the relative success or failure of different forms and methods of legislation. For this purpose the collection of administrative reports, above referred to, should be supplemented by judicial statistics, showing the number and the disposition of suits and prosecutions instituted for violations of police statutes and ordinances not amounting to crimes in the common sense of the term.

Effective and adequate research in this field calls for a systematic and coördinated plan covering the whole country.

F. *Fugitive Political Material.* It should be one of the functions

of a department such as is urged, to foster the preservation of important materials of a fugitive nature. The understanding of party organization and activities as far as it can be gained from printed materials must be derived very largely from publications which are prepared for temporary use and which do not find a place in ordinary library collections. Nevertheless these materials are of a distinct value and their complete loss would leave a serious gap in our sources of information. By establishing a coöperative system by which certain libraries with other agencies would join on a distributive basis in the collections of these materials, and through which investigators could be readily informed as to the location of various collections of this kind, great service might be rendered.

G. *Material for American Legal History.* The existing materials for American legal history should be indexed, both as a guide to the investigator of this important subject, and as an encouragement to the publication of those portions which are of greater value and wider significance.

H. *The Publication of Sources.* While it may with confidence be expected that if important sources of information are indicated through the processes above pointed out, other agencies will in some cases be ready to undertake their publication, it may nevertheless become advisable to undertake the publication of certain of the more important materials. It would, however, not be necessary or advisable to plan such publications before the field had been very thoroughly surveyed, and before the work of indexing and digesting, as outlined above, had reached a considerable degree of development. It admits of no doubt that should a central bureau of research in political science be established, the publication of the sources would receive a strong impetus, because the activities of such a department would bring out clearly the need for the printed preservation or the collection of certain classes of materials, and even if at the time the institution itself should not be able to undertake such publication, other agencies might be prevailed upon to assist in this matter.

I. *Bibliography.* It is a great desideratum to the student of political science that there should be a current bibliography of books and periodicals referring to political matters. It would be a comparatively inexpensive matter to have a scientific bibliography of this kind prepared, including also works on economics and sociology. It is evident that, in order to be of real use, a bibliography of this kind should be under the control of some scientific agency, and it

would seem that it would be one of the proper functions of a department of research to devise means by which a bibliography of this kind might be collected and published.

II. Monographic Studies.

In considering the desirability of undertaking or aiding monographic investigation on a large scale, we are impressed with the connection which this activity has with the general problem of ascertaining and digesting the materials available in any science. The Carnegie Institution has used both methods. The Department of History has thus far confined its efforts largely to the indexing of materials, whereas the Department of Economics has undertaken monographic investigations. Should a Department of Political Science be undertaken, we beg to indicate the desirability of combining the two methods.

As already stated, though it is believed that the collection and rendering known and accessible of source material is the work most urgently needed by political scientists in this country, the encouragement of monographic studies on a coöperative basis is one which a Department of Research in Political Science may properly perform. Among the subjects especially calling for investigation, we suggest the following as promising and important.

1. *Suffrage and the Newer Institutional Forms of Democracy.* Of late the democratic character of our institutions has been emphasized by the adoption of such arrangements as primary elections, the initiative and referendum, and the recall. These innovations have rendered the study of the popular element in our institutions more than ever urgent and it has become absolutely necessary for the student to be provided with definite data on this subject. The participation and abstention of voters, the character of suffrage requirements, the interest of voters in constitutional amendments, and referendum votes, are all of primary importance. The operation of woman suffrage has never been investigated on a broad basis, nor have the various elements of negro suffrage. There is needed a digest of the suffrage laws and complete statistical data upon local and general elections and primaries.

2. *Constitutional Conventions.* The larger participation of the elector in matters of government has brought an increase in the number of constitutional conventions. This political organization

bids fair to become one of the regular agencies of political action in America. Hence it is very desirable that it should be studied on a broad basis. There should be an investigation of the manner in which these conventions are brought about, their constituent elements, and their procedure. The scope of their activities and the actual results obtained in the way of change of established legal arrangements should be clearly set forth.

3. *Criminal Law Administration.* An investigation should be devoted to the manner of preventing and detecting crime and of apprehending criminals, including the organization of the police, and the use in the last resort of military force. Our existing methods of detecting crime and apprehending criminals, which have been inherited from England and which in rural districts place their main reliance upon the county sheriff and the town constable, have shown themselves to be of no real value in the conditions which now exist. In our cities, too, the problem of the efficiency of the police has become one of the greatest importance. The investigation covering these matters should then also be extended to a study of the methods of prosecution and trial of criminals, especially the functions of and efficiency of grand and petit juries, and of prosecuting officials. The whole question of criminal procedure and appeals would also be involved, as well as the general character of the penal law.

4. *American Legal Development.* It might be truthfully said that no country exhibits such a variety of experience in the matter of legal development as does the United States. The original transfer of the English legal system to this country, modified in the case of the original colonies by local conditions; the supersedure of the older popular law by a more strictly technical system of legal administration; the eighteenth century admiration for the common law, long outlasting the Revolution; the commencement of reformatory effort, followed by a wave of enthusiasm for codification, which caused the far-reaching change of legal forms during the nineteenth century—all these and many other interesting developments afford a very inviting field to the student desirous of elucidating our legal history, and of studying the general processes by which a legal order is evolved.

5. *American Party Organization and Methods.* The transformation and collection of political power is effected primarily by our party system. The study of its operations is consequently of fundamental importance to the study of political science. That this matter can be studied upon a strictly scientific or positive basis has

been demonstrated by such writers as Mr. A. L. Lowell and Mr. Jesse Macy. However, the avowedly fragmentary nature of their investigations indicates the necessity of coöperation on a large scale for the purpose of getting an assured basis for the complete and adequate description of party life and party developments in the United States.

CONCLUSION.

The institution of a department of research in political science should act as a clearing house for investigators. It would be in a position to direct students to the available sources and thus save a great deal of energy expended in fruitless or misdirected search. Investigators would be brought into touch with one another so that they might supplement the information of each other, and thus, through their mutual assistance, the science of politics itself would be advanced. It might also be practicable for the Department to act as intermediary between scholars in different parts of the country and copyists or archive workers in the city of Washington and other eastern cities.

The present memorial attempts nothing more than to indicate some of the more urgent needs felt by scholars in the field of political science, and to suggest the manner in which those needs may in large measure be met by the establishment in the Carnegie Institution of a Department of Political Science Research. Should you be impressed with the needs and possibilities here presented, the undersigned would be glad to furnish any further information that might be desired.

Respectfully submitted,

(Signed) ERNST FREUND, University of Chicago.
 PAUL S. REINSCH, University of Wisconsin.
 LEO S. ROWE, University of Pennsylvania.
 ALBERT SHAW, New York City.
 MUNROE SMITH, Columbia University.
 J. H. WIGMORE, Northwestern University.
 W. W. WILLOUGHBY, Johns Hopkins University.

PAPERS

THE RELATIONS OF POLITICAL SCIENCE TO HISTORY AND TO PRACTICE

PRESIDENTIAL ADDRESS BY THE RT. HON. JAMES BRYCE

This address is published in full in the AMERICAN POLITICAL SCIENCE REVIEW for February 1909 (vol. iii, no. 1).

THE LIMITATIONS OF FEDERAL GOVERNMENT

BY PROF. STEPHEN LEACOCK

McGill University

It requires no little hardihood to appear at this time and place as a critic of the system of federal government.¹ Such an attitude may well seem to indicate ignorance in a professor, incivility in a foreigner and ingratitude in a guest. But I am willing in the interests of scientific investigation to immolate myself upon the altar of my own temerity; I will merely remind you by way of personal apology that my own country like yours is organized upon a federal basis, and that if I have chosen to select the United States as the most conspicuous illustration of the case I wish to establish, it is merely because the advanced stage of federal development attained by this republic renders it the most proper field of investigation for the theorist. In this essay I deal with the operation of federal government in the economic and industrial sphere. It is my purpose to show that this system of government is developing, under modern economic condi-

¹ It goes without saying that in the title of this essay the term federal government is not used in contrast to state government, but as indicating the general system of divided jurisdiction existing in such countries as the United States or Canada, in contradistinction to the unitary governments of the United Kingdom and France.

tions, disadvantages of increasing magnitude and is out of harmony with the general environment of modern industrialism.

Such an opinion stated broadly and without modification appears at variance with conclusions usually accepted and to run counter to the trend of current political speculation. For several generations past federal government has been an object of continuous laudation and its further extension has become one of the commonplaces of political prophecy. An eminent American authority² has declared it to be "the only kind of government which according to modern ideas, that is permanently applicable to a whole continent." Even so cautious a theorist as Professor Sidgwick, who hesitates, for instance, to pronounce upon the continuance of constitutional monarchy, is willing to stake his reputation upon the future of federal government. "When we turn our gaze from the past to the future," he writes,³ "an extension of federalism seems to me the most probable of the political prophecies relative to the form of government."

To the weight of these authorities may be added the conclusions of Dr. Jellinek who declares:—"Ein grosses Reich wird leichter in föderalistischer Form als in der eines wenn auch noch so decentralisirt gestaltenen, Einheitsstaates sich in gedeihlichen weise entfalten können."

It must be admitted also that in the political history of the nineteenth century, the formation of federal governments has played a conspicuous part. The United States, which appeared at first as an isolated and somewhat dubious experiment in political construction, presently became an example for the imitation of other communities. The loosely united cantons of Switzerland were gathered in an actual federal union: the provinces of British North America adopted a government similar in its outline to the organization of the United States: in Germany federation succeeded where any other means of union appeared impossible: in Australia a federal system was created in still closer harmony with the American union than had been the confederation of Canada: and the movement towards a consolidation of the whole British empire upon a federal basis shows how profoundly that system of government has set its mark upon the political evolution of the century which has just elapsed.

But it is necessary while realizing the important part that federal

² John Fiske, *American Political Ideas*, 1885, p. 92.

³ H. Sidgwick, *The Development of European Polity*, 1903, p. 439.

government has played in the making of nations to realize that it, too, like all other human institutions, is far from perfect. It carries with it very decided limitations, serious faults of structure, unheeded perhaps at the time of its inception, but likely to break down under the altering strain of a new environment. Politically and on its external side federal government has proved itself strong: economically and in its internal aspect federal government is proving itself weak.

Let it of course be freely admitted that in most cases federal government has found its origin in the sheer pressure of external necessities. It represents a union for common defense where no other kind of combined action and concerted power would have been possible. It was this aspect of federal government which formed the preoccupation of those who framed and defended the constitution of the United States. The question in 1787 was not as to the choice between federal union and a more complete form of consolidation, but as between federalism and what was practically no union at all. Thus it comes about that the defense of federal government offered by Hamilton, Madison, and Jay has no bearing on the existing situation. Their task was to show the need of union for common defense and in the situation of the hour the future economic weakness of the scheme of union they devised lay entirely beyond their vision. A perusal of the essays of the *Federalist* shows its authors anxious to prove that the powers to be conferred upon the general government were only such as were vitally necessary to its existence: that a central government was not *dangerous*: that there was no fear of its constantly encroaching upon the power of the states. "It will always be far more easy," wrote Hamilton⁴ "for the state governments to encroach upon the national authorities than for the national government to encroach upon the state authorities." Madison,⁵ writing in the same strain, said: "The state governments will have the advantage of the federal government whether we compare them in respect to their immediate dependence of the one on the other, to the weight of personal influence which each side will possess, to the powers respectively vested in them, to the predilection and probable support of the people, to the disposition and faculty of resisting and frustrating the measures of each other."

It is true that federalism has thus offered a means of harmonizing

⁴ *Federalist*, No. 17.

⁵ *Federalist*, No. 41.

the differences of communities so divergent in certain respects that complete union was neither possible nor desirable. The huge dominion of the Virginia of 1787 was thus combined with Delaware: under federalism was found in 1867 for the first time a solid basis of union for French and British Canada. And in certain cases and under certain circumstances it may well be conceived that federal union might continue indefinitely as the form of government most suitable to the general environment. This will be the case wherever such natural barriers or actual distance exist between the component parts of the state as to preclude an economic and industrial integration. The union, sometimes proposed, between Canada and the British West Indies, or the union that was long advocated between New Zealand and Australia, could certainly be best accomplished and could best continue on the ground plan of a federal structure. In these cases the partial separation of legislative power only reflects the actual physical separation and the divergent economic life of the two countries. But where a contiguous territory, a homogeneous population and a lack of natural boundaries are found, there a federal form of government, however useful it may be as a preliminary bond of union, becomes increasingly a misfit and with the progressive integration of the general industrial life of the community proves itself an obstructive force upon the path of national progress. Especially is this the case under the conditions developed in the last half century, when the progress or transportation and communication have occasioned a general fusion of economic and industrial life over vast areas. The federal relation between, let us say, the New York and the Massachusetts of a hundred years ago rested upon an actual physical and economic separation: the federal separation of Ohio and Indiana, or of the two halves of Dakota today rests upon nothing but a form of constitutional contrivance at variance with the industrial life of the community. It thus appears in the course of industrial evolution that what was at its inception a political expedient of the highest value in the circumstances of the time wears an entirely different aspect in the light of an altered situation. In only one country of the world—the United States of America—has this situation as yet fully developed, and the case of the United States is therefore specially discussed in the present paper. Of the other federal states, some present an economic life still very largely decentralized and disintegrated; others contain in their structure certain modifications of federalism which give them something of the legislative elasticity of a unitary

organization. In Canada, to a great extent, the provinces represent either singly or in contiguous groups, distinct economic units. Ontario and Quebec, separated by natural boundaries and inhabited by people of different races and divergent traditions, fit with perfect harmony into a federal union. There is nothing unnatural or distorted in the fact that their legislative code in regard to labor, religion, and education should be framed upon distinct lines. The maritime provinces are also sharply separated in economic interest and by natural barriers from the rest of Canada and, geographically speaking, form distinct units even among themselves. Between Ontario and the west is a wide stretch of practically uninhabited country. The isolation of British Columbia speaks for itself. It is only on the plains of the west that the federalism of Alberta, Saskatchewan and Manitoba, effected by the adventitious aid of meridians of longitude, wears a suspicious appearance. It is true moreover that the structure of the Canadian constitution contains features of centralization which in many respects almost remove it from the category of federal governments. An analysis also of the Australian Commonwealth would show that the existing six states represent as yet distinct units of population, with physical barriers or uninhabited country interposed, and retain to a considerable extent a distinctive economic life corresponding to the political structure of the Commonwealth. But it is inevitable that in both Australia and Canada a further growth of population and the future integration of commercial and industrial interests will bring about a political misharmony similar to that now existing in the United States. The case of the German Empire stands by itself, for here federalism rests upon a distinctive historic and dynastic basis, and the peculiar operation of the constitution under the dominance of the King of Prussia obviates to a great degree all question as to *ultra vires* legislation.

It is therefore in the United States par excellence that the economic limitations of federal government have appeared and it is to that country that one must turn to study the general problem here presented. The central fact of the situation is that economically and industrially the United States is one country, or at best one country with four or five great subdivisions, while politically it is broken into a division of jurisdictions holding sway to a great extent over its economic life but corresponding to no real division either of race, of history, of units of settlements or of commercial interest. Metternich once said sneeringly of Italy that it was only a geographical expres-

sion. One cannot say even as much as this of such divisions as Utah or South Dakota. At best they are astronomical expressions whose location can only be found by the aid of a solar observation. The true meaning of this comes out when we consider to what a very great extent the progress of transportation, of intercommunication and the expansion of modern business enterprise has unified vast stretches of the United States, has rendered the whole country economically interdependent. The process which has been called the territorial division of labor has been carried forward until producer and consumer in every part of the Union are in close business relation with one and the other, each part of the country being very largely devoted to the raising or manufacturing of products for the use of itself and all the others. How little this economic interdependence harmonizes with the legislative separation into state jurisdictions may be realized by a consideration of the way in which industrial life in the United States has grouped itself upon the principle of the territorial division of labor, regardless of state lines. A few conspicuous illustrations will suffice for the present purpose. In the year 1900, of the \$101,000,000 worth of agricultural implements manufactured in the whole country, 41½ per cent came from Illinois: of boots and shoes, out of a total product of \$261,000,000, Massachusetts produced 44.9 per cent: the same State is credited with 32.8 per cent of the manufacture of cotton goods: in the making of fur hats four states represented a total of 88½ per cent: in the glass industry two states, Pennsylvania and Indiana, were responsible for 65 per cent of the total product: of the iron and steel manufactures valued at \$804,000,000 Pennsylvania produced 54 per cent: Ohio and New Jersey made 65 per cent of the pottery and clay products of the United States: Illinois did 40 per cent of the meat packing: three states produced 48 per cent of the pulp and paper made in the country: four states manufactured 88 per cent of the jewelry: Connecticut alone made 63 per cent of the clocks: California 60 per cent of the wine: Maryland canned 65 per cent of the oysters and New York alone supplied 99 per cent of the collars and cuffs of the United States.

Corresponding to this integration of industry is the progressive unification of control: the transportation system of the country has long since discarded state lines in its organization. The group of companies known as the Vanderbilt system operate some 20,000 miles reaching from New York City to Casper, Wyoming, and covering the

lake states and the area of the upper Mississippi: the Pennsylvania system with 14,000 miles covers a portion of the same territory, centering particularly in Ohio and Indiana: the Morgan system, operating 12,000 miles, covers the Atlantic Seaboard and the interior of the Southern States from New York to New Orleans: the Morgan-Hill system operates 20,000 miles from Chicago and St Louis to the state of Washington: the Harriman system with 19,000 miles runs from Chicago southward to the Gulf and westward to San Francisco, including a Southern route from New Orleans to Los Angeles: the Gould system with 14,000 miles operates chiefly in the center of the middle west extending southward to the Gulf: in addition to these great systems are a group of minor combinations such as the Atchison with 7,500 or the Boston and Maine with 3,300 miles of road.⁶

Analogous to this integration of industry of transportation is the progressive consolidation in the control of capital entirely disconnected, on its economic side, from the boundary lines of the state. This phase of American development is almost too familiar to require even the briefest citation. It has been recently estimated⁷ that the seven greatest industrial combinations of the United States represent a capitalization of \$2,662,752,000, that below these are 298 organizations representing the consolidation of 3400 original plants: and that the aggregate capitalization outstanding in the hands of the public of 318 important and active industrial trusts in this country is at the present time no less than \$7,246,000,000, and covers practically every line of productive industry in the United States.

Alongside of this national consolidation of interest in the control of capital is seen the organization of the forces of labor into vast groups representing the economic solidarity of the whole nation. The enormous membership roll of the Federation of Labor, or of such bodies as the railway brotherhoods, the United Brotherhood of Carpenters or the United Mine Workers of America shows the extent of this process. These associations either disregard state lines in their organizations or make use of them only as a matter of convenience. Their essential aims and collective activities are not associated with the separate states as economic areas.

⁶Statistics based on the Reports of the Interstate Commerce Commission and quoted by Mr. H. T. Newcombe. *American Review of Reviews* Art. *Recent Great Railway Combinations. 1902.*

⁷Mr. John Moody. *Encyclopedia Americana*. Art. *Trusts*.

Over against this is to be set the political organization of the country. Here we have the national government and along side of it 46 separate jurisdictions. According to the text of the constitution almost the whole economic field is given over to the latter. To the central government, still according to the text of the constitution, is entrusted only such control as arises out of the commerce cause, the general welfare clause and other familiar portions of Art. I, Sec. 8. The rest of the economic field except in so far as it is diminished by the restrictive operation of the amendment falls under the control of the state governments. In the days of Alexander Hamilton this allotment of jurisdiction corresponded with the actual facts of economic life. Today it does not. Yet it is remarkable how imperfectly even the most learned commentators on the constitution of the present time seem to realize the serious distinction between law and fact that thus arises. "The federal powers" writes Professor Stimson, "are political: that is the great criterion. The state powers on the other hand are domestic, social."⁸ When it is seen that the sequel of Professor Stimson's discussion shows⁹ that his use of the word "social" includes *commercial*, it might almost be thought that under modern conditions such a description of a federal system would contain in itself a serious indictment.

I am quite aware that hitherto I appear to have left out of consideration the very essence of the matter. The question of implied powers and of the expansion by federal control, the powers of judicial interpretation rises at once to one's mind. We have been told since childhood that the constitution of the United State is a document drawn in singularly simple and elastic terms: that the courts, following the leading of the eminent Marshall, have taken advantage of this to effect a progressive increase of federal power by the process of interpretation; that thus there have been "read in" to the constitution new powers to meet the needs of succeeding generations. "The commerce clause," says Mr. Frederick Judson, "written for the days of the stage coach and the sailing vessel has been adapted by judicial construction to an age of steam and electricity."

I readily grant that judicial interpretation has done much: that by its means federal power has been enormously increased; that without

⁸ *The Law of the Federal and State Constitutions of the United States* (1908), Chap. I, p. 69.

⁹ Op. cit., p. 71.

it the whole system would have terminated long ago in general shipwreck. But that it has really and adequately met the economic needs of the situation or that it ever can do so, is a proposition to which I hesitate to assent.

I maintain on the contrary that federal government, on the model of that of United States, creates something like a legislative chaos in which the conflict of rival authorities and the infinite confusion of jurisdiction removes from state and federal government alike the ability to exercise a proper and adequate control. Laws in reference to labor, capital, commerce and transportation, whether adopted by state or federal legislature, are honeycombed by constitutional limitations, riddled with adverse decisions and in the intricate state of the law are absolutely at the mercy, for weal or for woe, of the judicial authorities. Under these circumstances the impotence of the legislative branch of the government enables the judiciary to invade the sphere of the legislature and to constitute itself a quasi-legislative power, annuling or sustaining legislation, and expanding or contracting the competence of other bodies in the state according to its own opinion of what is best in the public interest. If the judiciary could perform this function in such a way as to actually and effectively set up a national and uniform control of industry and commerce there would be no fault to be found except perhaps by persons infatuated with pure theory or by the purblind advocate of the doctrine of state rights. But this effective, uniform control is precisely what is lacking, nor is there any prospect under the present system of its achievement.

To review the whole economic situation in detail as thus created would demand a vastly more elaborate treatment than is possible within the present compass. But a few typical cases may with profit be examined. A good example is found in the matter of labor laws. The labor code of the United States for instance, in regard to child labor, as a direct result and as a necessary disadvantage of a federal system, is a mere chaos. There is no unity, no uniformity, no common plan. Worse than that there is a standing temptation for any one state to make capital out of the virtue of its neighbors by permitting forms and conditions of employment elsewhere prohibited. Compare for instance the legislation operative in Massachusetts or Ohio with the fact (as stated by a writer in the Annals of the American Academy in 1907) that in South Carolina and in Georgia and in Alabama it is yet possible for a ten year old child by permission of the

law to work 12 hours a day. The same author states that there are 66 mills in North Carolina where 12 year old children may work a twelve hour night by law. Or consider the following statement as an illustration of the operation of federalism in the industrial field: "The glass workers of New Jersey oppose any attempt to prohibit the night work of boys under sixteen on the ground that such work is permitted in the neighboring state of Pennsylvania. Some people in Georgia seem to think that they cannot afford to place any restrictions upon their cotton manufacture because they are just making a good start in competition with new England and the rest of the world in cotton manufacturing and they want to enjoy every advantage they possess." Now it may be argued as against this that a legislative code that might apply to Massachusetts would be entirely out of place in such a state as Georgia; that in such a case the difference of law corresponds to the difference of economic environment. But what are we to say of the states of the Ohio valley forming a single community in the geographical, racial and industrial sense, but having labor laws for mines and factories on a widely divergent basis. "Industrially as well as geographically," declares Mr. J. H. Morgan chief inspector of workshops and factories in the state of Ohio, "we of the Ohio valley are one people and our laws should be uniform, not only that they may be the easier enforced, but in justice to the manufacturers who pursue the same industries in the several states and therefore come into close competition with one another."

Of the situation of the United States in general in regard to labor legislation, Professor Commons of the University of Wisconsin speaks as follows:

"The activities of unions in reducing the daily period of work is all the more important on account of the obstacles in the way of state regulation in the United States. These obstacles are found more in *our form of government* than in our economic conditions. The leading state in this line of protecting employees' welfare is handicapped by the lack of uniformity consequent upon our federal system, while the constitutions of the states and the nation, under the often diverse decisions of the courts, prevent the legislatures from doing what in other countries is solely a matter of legislative discretion."¹⁰

Or take the question of the control of insurance. Following on the

¹⁰ *The Law of Interstate Commerce, 1908.*

Supreme Court decision in *Paul vs. Virginia* in 1868 there were twenty-five years of agitation in favor of federal supervision and regulation and a number of unsuccessful attempts at legislation. President Roosevelt, in his message of Dec. 8, 1904, said that insurance vitally affects the great mass of the people of the United States and is national, not local, in its application. Meantime what was the actual position of the regulation of insurance under the federal system? The state insurance laws were utterly chaotic and conflicting. "If a compilation of these laws were attempted," wrote Mr. Huebner of the University of Pennsylvania, "a most curious spectacle would result. It would be found that fifty-two states and territories are all acting along independent lines and that each, as has been correctly said, possesses its own schedule of taxations, fees, fines, penalties, obligations and prohibitions and a retaliatory or reciprocal provision enabled it to meet the highest charges any other state may require of companies of other states. . . . Especially in fire insurance have the evils of state legislation become clearly apparent. Despite the general introduction of a uniform fire policy in the United States, its provisions have given rise to a great diversity of judicial opinion in the several states."

Take again the still more sweeping illustrations offered by industrial corporations and the conditions of their organization and management. Here again the 46 distinct jurisdictions assert themselves in the form of 46 different modes of incorporations and 46 different plans of control or the lack of it, although such an arrangement corresponds to nothing whatever in the real industrial and business life of the community. The subject is so familiar as to need no elaborate quotation in support. "The abuses of the corporate privileges which have sprung up in the gap between federal and state powers," writes Mr. F. E. Horack,¹¹ "are the result of the deplorable lack of uniformity in the corporation law and procedure in the several states. . . . Adequate regulation through state legislation has proved to be impossible. Worse than all these has arisen the strange spectacle of state governments bidding against one another for the privilege of incorporating a company by the laxity and inefficiency of their laws."

"The bidding of the states for the chartering of corporations," says a recent writer, "has created a body of laws which confer great powers—powers our forefathers never dreamed would be given to

¹¹ F. E. Horack. *The Organization and Control of Industrial Corporations, 1903.*

any group of individuals—to those who are willing to pay a small corporation fee in exchange for such privileges. So little supervision and control are now exercised by the state governments that corporations are able through the secrecy which surrounds their actions, to override the law and to some extent to be creations subject only to the wishes and desires of the corporate managers."

This last topic brings one at once to the question of combinations and the anti-trust legislation of the state and federal governments. Here again the inevitable result of the divided jurisdiction and constitutional limitation set up by a federal system has been the creation of a bewildering chaos of legislation. As enumerated in the Industrial Commission Report of 1900, anti-trust measures had been adopted by constitutional provisions in 15, and by statute in 27 states. The whole mass of this legislation devoid either of uniformity of structure or of purpose, has been perforated in all directions by hostile decisions of the courts. The Supreme Court decision of March 10, 1902,¹² declaring the Illinois anti-trust law invalid has been held to have shattered half the anti-trust laws of the states.

A final and perhaps convincing illustration of the inherent inefficiency of a federal system of government in the economic field is found in the matter of the control of railways. Here again the 46 separate authorities of the United States obtrude themselves at every turn; conflicting codes in regard to freight rates are matched against conflicting systems of taxation and conflicting methods of state control. And for what reason? On what basis? Why should a long and short haul clause be found in operation in one-half of the states and not in the other: why should 23 states¹³ forbid the consolidation of parallel lines and 23 others permit it: how can it possibly be in the public interest that 16 states should enact laws in prohibition of pooling and that 29 should not: that one state should punish unjust discrimination with a fine of fifty dollars and another with a fine of twenty-five thousand; that the offense of obstructing the track should render the offender liable to three months in jail in Mississippi, three years in jail in New York and to capital punishment in Wyoming? But if one would be convinced of the sheer purposeless chaos into which the public management of transportation is reduced by the conflicting jurisdiction of the rival authorities of a federal sys-

¹² *Trade Unionism and Labor Problems* (1903). Introduction, p. xiii.

¹³ Excluding Oklahoma. The statistics are taken from the publication of the Interstate Commerce Commission, *Railways in the United States in 1902*, Part iv.

tem it is only necessary to consult the comparative statement of the state regulation of railways published in 1903 by the Interstate Commerce Commission. The effect produced is as if a general statute regulating transportation had been snipped up with a pair of scissors into 45 parts and every portion and subdivision of it similarly divided, and the pieces then thrown broadcast over the surface of the country and afterwards swept up in each state and gummed together to make a railroad law. The opening words of the report in question are as follows: "One of the chief embarrassments in the exercise of adequate government control over the organization, the construction and the administration of railways in the United States is found in the many sources of statutory authority recognized by our form of government. The federal constitution provides for uniformity in statutory control, so far as interstate commerce is concerned, but it does not touch commerce within the states, nor, as at present interpreted, does it cover the organization of railroad corporations or the construction of railroad properties. These matters, as well as the larger part of that class of activities included under the police jurisdiction, are left to the states. Such being the case, the development of an harmonious and uniform railroad system must be attained if at all by one of two methods. The states must relinquish to the federal government their reserved rights over internal commerce, or having first agreed upon fundamental principles, they must, through comity and convention, work out an harmonious system of statutory regulation."

I have already referred above to the peculiar position occupied by the courts of law in the system thus created. It has been by the process of judicial interpretation and the gradual amplification of central power by indirect means that such relief as has been afforded to the confused economic situation has been rendered possible. The panegyrics that have been called forth by the timely exercise of this power of the court, have doubtless been engendered by a subconscious sense of public satisfaction at the avoidance of what would otherwise have been a national catastrophe. But the scientific student of the principles of government is at least entitled to ask whether the position in which the judiciary are thus placed, as one of the organic bodies of state control, is necessarily the best possible. Strangely enough this question never appears to be raised by American authorities. The interpretation of the law in such a way as to make new laws where none existed before, or to reverse or modify laws

already in existence, is assumed to be a natural and praiseworthy function of the judicial body. Thus there has sprung up an apotheosis in the courts of law in America which contrasts sharply with the general distrust of legislative bodies. The courts of final resort have become quasi-legislative bodies. Let me cite one or two very reputable authorities on this point. "The nine justices of the Supreme Court," writes Mr. Beck, "are a quasi-constitutional convention. As the conditions which call for the exercise of constitutional powers change with the progress of the centuries necessarily the true powers of the constitution *often latent and unsuspected* must from time to time be disclosed and developed," "I may say at once," writes Professor Seager in discussing the attitude of American courts toward restrictive labor laws, "that the conclusion to which I have been brought is that under the flexible provisions of our constitutions the question of the constitutionality of a restrictive labor law is inseparably connected with the question of the wisdom of such a law. In other words, granted that a restriction is wise under the given conditions, *it is an easy task to prove that it is also constitutional*. If this view is correct no amendments to American constitution will be needed to provide the country with as comprehensive labor codes as are found abroad. *All that will be required is the conversion of American judges to belief in the beneficence of this species of legislation.*" In the face of this statement one cannot help a feeling of amusement at the remark made by Professor Seager in immediate connection with the above, that "*Workingmen are not usually able to follow the subtle reasoning on which judicial decisions rest.*"¹⁴

Let me quote in the same connection another very eminent authority. "The public opinion of one age and generation, even the thoughtful and judicial opinion," says Mr. Frederick Judson, "is not that of another. It was the changed economic conditions, the tremendous development of commerce between the states, which forced the way to the judicial recognition of the latent federal powers in the commerce clause of the constitution." Or take the words of the same eminent commentator in regard to the Lottery Cases. "The change in public opinion influencing constitutional judicial construction may result not only from economic or social changes but from changes in the moral standards of public opinion. This was forcibly illustrated in the lottery cases where the decision was based

¹⁴ H. R. Seager. *Political Science Quarterly*, Vol. 19, p. 589.

on a distinctly moral ground that lotteries were recognized public nuisances: while at the time of the adoption of the constitution lotteries were a recognized means of raising money for public, educational and charitable purposes. It would have appeared strange indeed to the framers of the constitution that the federal power could ever be successfully exerted to prohibit interstate traffic in lottery tickets." Surely this is equivalent in plain prose to stating that the constitution approved of state lotteries and the Supreme Court did not. Indeed such phrases as the "true powers of the Supreme Court," "latent and unsuspected," would seem a little absurd and almost ludicrous were it not for the extreme gravity of the subject. Who is it that does not suspect them? What first arouses public suspicion of their possible presence? What daring hand finally lifts the lid off them and reveals them to the public eye? or what is a *decision based on moral grounds?* Surely there is involved here a political occultism of a new sort. These acts are the acts of a legislature, not a court of law. Why should not theorists at any rate give things their proper names and say that in view of the faulty operation of federal government in the economic field the judiciary assume, as far as they dare venture, the functions of a legislature, and when the plain sense of the text of the constitution will not harmonize with their view of present needs they meet the situation by taking something out of the constitution which was never put into it? Yet somehow—apart from the whispered confabulations of the commentators among themselves—there is a hesitancy to use such brutal bluntness in regard to this Holy of Holies of the American Constitutional System. It may be that in this fact we catch sight of a general tendency as old as the history of human government. All governments since the beginning of the world have lived upon Mystery. The medicine man of Nigeria owes his power over his adherents to his notorious intimacy with the unseen spirits of the jungle. Monarchy lived long upon its shrouded and mystic connection with Divinity. American democracy, having by its degradation of the legislature repudiated its first born child, has set up for itself the Mystic Worship of Judicial Interpretation.

Consider finally the intricacy and complexity which often surrounds the smallest of legislative measures under a federal system. The legislature of California (I believe I am citing an actual case) passes a law forbidding a barber to shave on Sunday. At once arises the question, Have the legislators the necessary power? Can the barber shave

under the fourteenth amendment in spite of them—*à leur barbe*, as the French put it? Is shaving interstate commerce? Is it perhaps an unsuspected power of the constitution? Is shaving on Sunday a thing permissible in itself on moral grounds? And so the case originates and is bandied from court to court with much citation of many things which, save for the Great American Mystery, would seem to have nothing to do with it, until finally it is settled on plain principles of common sense just as it would have been settled in the first instance by the legislature of a unitary government.

The present essay has been concerned rather with a critical analysis of the present than with prophecy as to the future. But if the analysis thus made is just, it would appear that the forecasts of Professor Sidgwick and others on regard to the future of federal government are based upon an imperfect estimate of the force of economic factors in modifying the structure of government. It is the opinion of the present writer, hazarded with all deference to the weight of distinguished authority to the contrary, that in proportion as economic progress results in industrial integration, federal government is bound to give way. It is destined finally to be superseded by some form of really national and centralized government, occupying at its own discretion whatsoever part of the total economic and industrial field it may see fit to occupy untrammeled by the network of a written constitution and the jugglery of judicial interpretation.

THE INFLUENCE OF STATE POLITICS IN EXPANDING FEDERAL POWER

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In discussing this subject it will be necessary to refer to democratic principles of government. Unless it is understood distinctly just what is meant the statements made will not convey clear ideas. There are two senses in which the word democratic is used—one having respect primarily to means and the other to ends. From the one point of view, all institutions that pretend to put power in the hands of the people are democratic in their character. An instance of this assumption appears in last year's programme of this association, wherein the direct primary, the initiative, the referendum, and the recall are designated as "the newer institutional forms of democracy." From the other point of view, the quality of institutions is not decided by the emotions and intentions with which they are created, but is to be discerned from their results, so that the democratic value of any institution is wholly contingent upon its usefulness in subjecting the operations of government to the control of the people. From this point of view, the classification quoted from last year's programme begs the very question that is to be determined.

Each of these attitudes of thought has an appropriate background of political theory and historical doctrine. According to the one, the ideal form of government is a pure democracy, in which all the people are equal in political status and function, they themselves managing the public business and directing all public agency. The problem of democracy in these times is, therefore, to find means of approximating as closely to this ideal as is possible under modern social and industrial conditions. The direct primary, the initiative, the referendum and the recall, are hailed as institutions supplying such means. This attitude of thought is favored by the historical doctrine which derives free institutions from Teutonic primitive polity. According to an eminent American exponent of this

doctrine, Mr. Hannis Taylor, it is possible "to trace the mighty stream of Teutonic democracy from its sources in the village-moots and state assemblies of Friesland and Sleswick across the Northern Ocean into Britain, and across the Atlantic into North America."¹

It is held by others that in view of what is known of the descent of man and of the laws of political development, no such state as that described as pure democracy could exist, and that, as a matter of fact, there is not an instance of it to be found in all history. It is as much a romantic fiction as Rousseau's state of nature and is, indeed, a variant of that illusion. Democracy implies equality of political status, but in a state of freedom there can not be identity of function among the units of any community. The notion that Teutonic primitive polity has been the source of modern free institutions is antagonized by critics who adduce evidence to show that it is destitute of historical foundation. Such writers as Boutmy, Sidgwick, and Maitland attribute English constitutional government to historical accidents, the most potent of which was the vigor of royal authority, causing representative institutions to be fostered from their convenience in enabling the monarch to reach and use his people for national advantage. In his "Development of European Polity" Professor Sidgwick contends that the great Teutonic contribution to political development was the erection of kingship into a firm and stable institution. In tracing the rise of modern free institutions he finds that the basis was supplied by the unity and order established through the predominance of monarchy. Professor Maitland, approaching the subject from the standpoint of jurisprudence, expressed similar views. Political organs now serving as essential means of popular control were originally offshoots from royal prerogative. Crown authority is the basis of democratic rule. In the course of lectures recently published under the title of "Constitutional History of England," Professor Maitland declared that "we must not confound the truth that the king's personal will has come to count for less and less, with the falsehood . . . that his legal powers have been diminished. On the contrary, of late years they have enormously increased."²

From this point of view, democracy, instead of being a primitive and simple form of government, is an advanced and elaborate form

¹ *Origin and Growth of the English Constitution*, Preface to part 1, p. x.

² P. 399.

of government, the product of a long course of political evolution. Democratic impulse is the concomitant of the extension of the area of public consciousness, a process always traceable to historic causes. With the increase of popular interest in public affairs it is a natural consequence that there should be a demand for means of subjecting the management of public affairs to the control of public opinion. But it does not follow that democratic impulse will obtain satisfaction in the form of government that ensues. That will depend altogether on success in developing appropriate political structure arranged in stable institutions. Without such institutions democratic tendencies are perverted, and in all ages the outcome has been the correlated growth of oligarchy and ochlocracy, until necessities of public order introduce dictatorship. Historically, this cycle of change has been so regular that the very name of republic was long odious as indicating a state in which the weak were the prey of the strong. This prepossession deeply colored English political literature during the eighteenth century. A powerful expression of it is contained in the nineteenth chapter of Goldsmith's "Vicar of Wakefield," wherein the republics of Holland, Genoa and Venice are mentioned as types of polity in which "the laws govern the poor and the rich govern the laws." Even in our own time there are thinkers who insist that institutional decay and social disorder are the normal outcome of democracy. Bismarck, unconsciously reiterating an opinion anciently expressed by Polybius, held that there is a natural tendency in politics to move in a vicious circle from absolutism to anarchy and back again. Nietzsche declared that democracy is a decaying type of the state. According to this theory, popular government is but a transient episode in the life of a nation. If liberty and order seem to be for a time tolerably secure under it that is due to habits and faculties instilled by race experience under regal discipline, but which gradually relax when that discipline is removed, until increasing disorder compels resort to dictatorship. Historians who adopt this theory, do not deny that democratic periods may be attended by brilliant displays of art and culture as in ancient Athens and mediæval Florence, but they hold that such outbursts of human capacity are to be attributed to previous storage of power in the character of the people by coercive authority. As the historian, Froude, puts the case, "democracy is the flowering of the aloe," referring to the way in which the century plant suddenly puts forth its grand flower after long preparation.

While evidence can hardly be adduced, I am under the impression that our own politicians, if they seriously consider the matter at all, incline to this attitude of thought. Cynicism is prevalent among party managers in their table talk. As a relief from the obsequiousness they practice in public they seem to take pleasure in sarcastic and humorous comment upon the greed and foolishness of the "peepul." Contempt of the people by the politicians who use them is, however, an ancient trait. Cicero, the silver-tongued orator of his day, in one of the essays he composed for circulation in his own set remarked: "Can anything be more foolish than to think that those you despise single can be other when joined together?"

In support of the doctrine that democracy is inherently unstable and transitory, the weighty opinion of the Fathers may be cited. Evidence of the profound distrust and aversion with which they regarded democracy abounds in the reports preserved of the debates in the constitutional convention and in the exposition of their views contained in *The Federalist*. In view of the evidence before them the conclusions they reached were inevitable. Everything that history had then to say on the subject was to the effect that while democratic tendencies always appeared whenever a certain stage of development was reached the result always had been the decay and breakdown of old institutions and the final exhaustion of the movement through its inability to produce new institutions adequate to the requirements of public order. The inevitableness of this attitude of thought at that period is indicated by Professor Sidgwick. He remarks that "in the middle of the eighteenth century an impartial continental observer," surveying the course of European history, "would probably have regarded monarchy of the type called absolute as the final form of government to which the long process of formation of orderly country-states had led up; and by which the task of establishing and maintaining a civilized political order had been, on the whole, successfully accomplished, after other modes of political construction had failed to realize it."⁸ Professor Sidgwick's judgment is borne out by the opinion of such a shrewd, cool observer as David Hume. In his time, England was a marked exception to the general prevalence of absolute rule, but, in an essay published in 1741, Hume argued that English constitutional limitations would not endure. He declared that "we shall at last, after many con-

⁸ *Development of European Polity*, p. 319.

vulsions and civil wars, find repose in absolute monarchy, which it would have been happier for us to have established peaceably from the beginning."⁴

Now, if we view political phenomena with the calm, naturalist scrutiny proper to scientific study, I think we must admit that eighteenth century opinion was abundantly warranted by the uniform testimony of history up to that period. Has there been any change since then to compel revision of that opinion? Has there been any advance in the evolution of political structure, supplying to democratic government an assurance of stability which it lacked before? I think there has been. If this be so the fact is of the greatest importance, for apprehension of it will give us the means of discerning the true cause of our own defects in democratic organization of public authority. What then is the new factor, which the Fathers could not include in their reckoning since it was not manifest in their time? It is the new basis to democratic government afforded by national monarchy, using the term with strict etymological significance as expressive of unity of executive authority.⁵ As Professor Sidgwick puts the case: "The unity which should be characteristic of an ordered state is most easily attained by placing it under the rule of that which is intrinsically and *per se* one."⁶ It is my impression that political science owes to Guizot the first clear exposition of the fact that modern monarchy is essentially a popular institution. The stages of the institutional process are most clearly described in Professor Sidgwick's "Development of European Polity," wherein he points out the divergence between the Teutonic country-state and the Greek city-state in the course taken by political evolution.

Thus, the hope of the democratic movement dating from the eighteenth century does not lie in the emotional force that impels it or in the diffusion of culture that accompanies it. There is nothing

⁴ Essays, Moral and Political.—Seventh essay.

⁵ Monarchy as a term of political science is not synonymous with royalty. In the opening paragraph of the third chapter of the *Decline and Fall of the Roman Empire*, Gibbon gives the proper definition. He says: "The obvious definition of a monarchy seems to be that of a state, in which a single person, by whatever name he may be distinguished, is entrusted with the execution of the laws, the management of the revenue, and the command of the army." John Adams correctly designated the United States as "a monarchical republic." Adams' *Works*, vol. vi, pp. 117, 118.

⁶ *Development of European Polity*, p. 327.

new in these characteristics. So far as they are concerned it is the same old story over again, told by Greece, and by Rome, and by mediæval Italy. But what is new is the conservancy that marks the modern democratic movement. The retention of old institutions, as the basis of popular rule, is, indeed, a new and hopeful characteristic. The work of the middle ages in developing national monarchy has produced an order of vertebrata in political zoology that really seems able to endure the stresses arising from rapid expansion of public consciousness and hence of evolving stable forms of democracy. Whereas, in ancient politics such stresses were disruptive, there are now political conditions in which they tend to increase of structure and enlargement of function without impairing the unity of the state, thus augmenting its capacity to adjust its arrangements to its needs. The nature of the process suggests that the democratic state when actually realized is the highest form of the state, for it is energized in all its parts and is thus capable of the greatest efficiency. And this is not merely a theoretical possibility. There is evidence, supplied in our own times, showing that marked success in establishing democratic rule has been actually attained by some peoples. The most illustrious administrative achievement that history records is the way in which truly democratic commonwealths have utilized advances in technology to give the common people cheaper and better service, instead of allowing the resultant economies to be absorbed in producing millionaires. But such commonwealths are able to secure these results by plenitude of authority that was originally collected by royal prerogative and that still preserves the ancient forms, although the authority has become wholly subject to democratic direction and control.

This then is what I have in mind in speaking of democratic government, namely, actual achievement in organizing public authority so that its power shall express the will of the people and its operations shall serve the welfare of the people. In that case, government will evince its democratic character by honest and efficient administration. The adage that by their fruits ye shall know them is the standard by which institutions are to be judged. All institutions are instrumental in their operation. They are not ends, but means to ends.

In adopting this concept of democratic government, we are advised by race experience in all ages that there are two conditions essential to its existence:

1. Consolidated power. Government can not be really democratic unless it is decisively superior to any other aggregation of power, whether it be that of a mob, a class, a corporation or a plutocratic conspiracy;—superior, not merely in theory, or spasmodically, but in the ordinary and regular exercise of its functions. The creation of such power, through the formation of appropriate political structure, has been the achievement of monarchical rule. The legal institutions of every civilized country bear witness to that fact.

2. Responsibility. To every exercise of power a definite responsibility should attach. Representative institutions have been the means by which this principle has been asserted. But representative institutions do not necessarily secure responsible government. The natural tendency, exhibited everywhere and always, so far as circumstances permit, is for those in the representative position to use their opportunities for themselves. Unless efficient means of counteracting this tendency are provided, representation becomes a scuffle of particular interests. Such means were provided as an incident of monarchical rule. It was as a check upon the irresponsible exertion of royal influence and as a method of solidifying the position of the Commons in defense of popular rights, that rules of order were adopted debarring members from offering any grant or aid to the Crown not expressly stipulated by responsible ministers. In this way was evolved the system which in all English commonwealths and in Switzerland makes it the right and duty of the administration to frame the budget and to prepare legislative measures for the consideration of the representative assembly. Never has the principle of responsibility been asserted by representative institutions save through such restraint upon the activity of individual motives and interests. The essential condition is that in practice the representative assembly shall be confined to the business of examining the criticizing governmental action, thus discharging the function of control in behalf of the people.

Viewed from this standpoint the political characteristics of American states are seen in their true nature. In their constitutional scheme they date back to the eighteenth century, a period anterior to the formation of the modern type of democratic government. The American people have never experienced democratic government. They do not know what it is and do not understand its requirements, so it has been possible to put them off with a base imitation. Neither the power nor the responsibility essential to

democratic government is established in the constitutional arrangements of American states. Therefore, the democratic tendencies that have developed since the eighteenth century, do not find in them appropriate organs of authority. The consequences are just such, in their general nature, as have appeared in all ages in similar conditions. The historic perversions of democracy—namely, oligarchy and ochlocracy—have manifested themselves in America quite as distinctly as in Greece, Rome and mediæval Italy. The resemblances that historians are now noting between ancient and modern bosses, grafters and spoils-men rest upon substantial identities, affording a fine demonstration of the universal principle that like causes produce like effects, irrespective of the emotions and intentions with which the causes are set in operation. The cycle of change has followed the same order in all ages. As a remedy for abuses of power, partition of power is carried on, elective offices are multiplied, control passes to able men operating outside of the constitutional depositaries of power and those men use their influence to govern legislation and to exploit public resources for their own advantage. The general behavior of public men is determined by the conditions under which they act. When defect in behavior is systematic it invariably indicates defect in those conditions. But since concrete instances of defect in behavior generally appear as evidence of personal delinquency, it seems to be the case that the source of trouble is the personal character of the men who get into public office. Therefore, the efforts of reformers are directed to the conditions under which power is gained rather than to the conditions under which power is exercised. Hence the tendency is to elaborate electoral conditions, and in this way complications are introduced which in practice confer special advantage upon oligarchy because of its superior ability to command expert service and ample funds. The American state has entered on a fresh cycle of change in this respect. By reference to Professor Merriam's recent work on "Primary Elections," it will be found that the vagaries of ochlocracy there revealed emulate those of ancient Greece. If any one thinks that these political curios should be regarded as institutional forms of democracy let inquiry be made why it is that they have never appeared in genuine democratic government. The people of Switzerland, or New Zealand, or the Australian states do not trouble themselves about methods of nomination. They leave that matter to private initiative and expense. They reserve their concern for

the way representatives shall behave after the election and as regards that they fix conditions hard and fast, to establish responsibility both for what is done and what is not done.

To understand the sequence of cause and effect in considering the influence of state politics in expanding federal power, it is not necessary to discuss legal relations as such. The legalistic aspect is that which the situation presents to lawyers and judges, but the concern of students of political science is with the underlying influences which mold legal relations. In the tendencies towards aggrandizement of federal power now manifested in national legislation and in the decisions of the courts we may discern the operation of the historical principle that sovereignty unprovided for in extant forms of government always seeks to embody itself in new forms. That is the concise history of the Greek tyrant, the Roman princeps, the despot of mediæval Italy and the American boss. But the American situation is exceptional in that alongside of political structure and governmental function decomposing under the invasion of oligarchy and ochlocracy, there is political structure in which the predominant tendency is towards integration of structure and increased vigor of function. The framers of our national constitution, correctly interpreting the lessons of history, firmly established the principle of executive unity in the federal government. Thus a situation was created that curiously parallels, in reverse order, that which existed in Europe during the Middle Ages. Then the legalistic prepossessions were all originally on the side of imperial sovereignty. But the disintegration of the Holy Roman Empire emptied imperial sovereignty of real substance. The legalistic spirit, in seeking adequate foundations for its activity, turned to the real power exhibited by various states of the empire, and gradually built up the system of national monarchy upon which European civilization rests, and from which the modern democratic movement derives the institutional order that gives it efficiency. It has been just the other way round, in this country. With us, the states were the original depositaries of sovereignty. The federal government, in its incipiency, was weak, precarious and infirm, but from the very first the influence of state politics tended to expand federal power. This is no speculative opinion. We have the express testimony of the Fathers that the incapacity of the states was the prime reason for adopting the instrument of government framed by the constitutional convention of 1787. That is the

argument which runs all through the Federalist. The same cause which led to the adoption of the national constitution has operated to aggrandize federal power ever since. The legalistic spirit turns instinctively to the federal government as the sole, competent organ of sovereignty in this country. Every resource of legal ingenuity is strained to bring rights and interests under federal jurisdiction.

Thus the influence of state politics in expanding federal power displays the operation of a historic principle of political biology. Our state politics exhibit the characteristic phenomena which occur with monotonous regularity in all ages, as republican forms of polity degenerate. They are all there—the growth of plutocratic privilege, the violence of demagogues, the infirmity of legislation, the decay of justice, the substitution of private vengeance for judicial process, the increase of crime and disorder, and the growth of associations formed for self-help in the redress of grievances, and resorting to night-riding, torture and assassination in furtherance of their purpose. All these details are familiar to students of history and in all ages the outcome has been the same—the establishing of some new basis of public order. In satisfaction of this fundamental human need, the legalistic spirit has accomplished, in past ages, prodigious tasks of invention. Starting with only such organization as was provided by the household arrangements of a Roman magnate, the legalistic spirit reared the majestic edifice of imperial administration and codified law. When imperial administration decayed, the legalistic spirit, starting with only such basis as was provided by feudal lordship, built up royal prerogative and established national monarchy. Is it at all wonderful then, as the American state sinks deeper and deeper in the mire of ochlocracy, that the legalistic spirit should turn to such a conveniently accessible refuge as federal authority? Here no task of invention is required of it. All that the legalistic spirit has to do is to construe existing law to meet political exigency. Its habitual inclination to do this very thing has become conspicuous in our jurisprudence. It acts without partiality. Federal authority showed itself signally incompetent in dealing with the race problem. The legalistic spirit has construed out of the Fourteenth and Fifteenth amendments the authority they were designed to confer upon Congress to maintain negro suffrage by appropriate legislation. State authority has shown itself signally incompetent in dealing with economic questions. The legalistic spirit has transferred to federal power control over currency supply; it is transferring to federal

power control over transportation rates and methods, and it seems disposed to transfer to federal power control over all corporations. And these things are only stages of a process of transfer that will eventually carry along with it all personal rights, unless the American state extricates itself from its present condition of inability to carry on honest and efficient government.

There are certain influences at work which appear as direct causes although they are really results of the general process of degeneracy that has been noted and as causes they have only secondary rank. Their operation is so conspicuous, however, that I am able to refer to casual speeches by our public men for details. One of these secondary causes is the habitual mendicancy of the states in their attitude towards the national government. What they can beg, they are unwilling to do for themselves. The Hon. James A. Tawney, Chairman of the House Committee on Appropriations, discussed this subject in a speech that was delivered on May 30, 1907, at Gettysburg, and was published in the Congressional Record for May 16, 1908. Another of these secondary causes was adverted to by Speaker Cannon, in his speech on Dec. 10th, before the recent Rivers and Harbors Congress that met in Washington. He related how Illinois had spent \$20,000,000 for railroads that were never built. As a result of similar incompetency our state constitutions generally contain provisions forbidding the use of public credit for public enterprises. The American state is unique in that the people not knowing how to control the government have reduced it to a condition of bare existence. America has created a form of polity the world has never seen before, in producing the manacled state,—the state that puts a strait-jacket and handcuffs upon government. And this at a time when there is an imperative social demand for extending the sphere of government and increasing its activities! For a penetrating discussion of the whole subject from the legalistic standpoint, the speech of Secretary Root may be consulted, that was delivered before the Pennsylvania Society in New York City, December 12, 1906.

It all comes to this, that the states are so corrupt and incapable that the people turn from them in disgust when they feel the need of government. To use one of Burke's pregnant sayings:—"It is not from impotence we are to expect the tasks of power." So long as this situation continues state politics will tend to expand federal power. At present, all the influences of state politics, particularly those issuing from the activity of reformers, are accelerating the process.

THE INCREASED CONTROL OF STATE ACTIVITIES BY THE FEDERAL COURTS

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The increased control, since the adoption of the first twelve amendments to the Constitution of the United States, of state activities by the federal authorities is not because of any recent increase of federal power. There has been no increase of federal power since the adoption of the thirteenth, fourteenth and fifteenth amendments to the Constitution of the United States. All the powers given to the federal government permitting control by it of state action is found in the constitution. If power is not delegated by the constitution to the national government it does not possess it at all; for all powers are reserved to the states or to the people thereof which have not been delegated to the government of the United States by that instrument. The acts of congress passed to enforce the powers delegated to the United States by the constitution do not create or confer powers not delegated by the constitution. But with the adoption of the last three amendments to the constitution, particularly the fourteenth, the powers delegated to the national government were greatly increased, and with such increase, following the legislation of congress to enforce the same, came greatly increased control of state activities by the federal courts. Before the adoption of these amendments the greater part of federal interference with state action arose out of the commerce clause of the constitution and the inhibition contained therein against the passing by any state of any *ex post facto* law, or law impairing the obligation of contracts. The first twelve amendments to the constitution did not restrict state action, and the first ten amendments are only a limitation upon the powers of the federal government.

The fourteenth amendment to the constitution did not create new privileges and immunities of citizens of the United States; nor did it add to the rights of any person concerning life, liberty or property; nor did it provide any new process of law; but it gave to the national

government the power to control state action abridging such privileges and immunities; to prevent state action depriving any person of life, liberty or property without due process of law, and to prevent denial by the states to any person of the equal protection of the laws. The powers already possessed by the national government under the constitution as originally adopted were greatly increased by the fourteenth amendment, which gave it power to review and annul all action of the states concerning the privileges, immunities and rights guaranteed thereby. It can be seen that the powers reserved to the states were, by this amendment, quite limited, and that those delegated by it to the national government embraced almost all the rights of the individual.

Whether it was the part of wisdom to incorporate this amendment into the organic law is no longer a question open to discussion. The people would not today eliminate it even were the negro not an element to be taken into consideration. Under the wise and temperate construction placed upon it by the Supreme Court of the United States, always with considerate regard to the rights of the states and in a spirit of fairness and comity, the people have come to believe in its beneficence and to look upon it as one of the greatest safeguards of all that is held most dear by them—life, liberty, property and the equal protection of the laws. We have heard it said sometimes that the Supreme Court of the United States has, by construction, whittled away the constitution. An unbiased and careful review of the decisions of that court will show that this statement is entirely inaccurate. Beginning with the earliest decisions of the court, passing down through the dark days of the civil war to the present moment, it has "hewed to the line" regardless of where the chips would fall. Prior political association of its judges has not influenced its decisions; the intensity of sectional feeling, at times widespread and violent, has not deterred it from duty; powerful partisan influences have been unavailing to cause it to swerve from the line of correct decision. The permanency of our government rests with the Supreme Court of the United States. It is the balance wheel holding in place and steady the machinery of government. Without the Supreme Court of the United States, the structure would, from its own weight and its inherent opposing and conflicting elements, fall to pieces in hopeless wreck.

I shall not in the time allotted for this paper attempt a discussion of the increase of federal influence and power under the commerce

clause of the constitution, or of federal control of state action impairing the obligation of contracts, but shall confine myself principally to a discussion of the control of state action in the regulation of railroads and other public utilities by the federal courts.

It is no longer questioned that the federal courts are invested with the power and that it is their duty to declare an act of congress, as well as an act of the legislature of a state, which is in conflict with and repugnant to the federal constitution, null and void. Chief Justice Marshall said in *Maybury v. Madison*, 1 Cranch, 137, "It is emphatically the province and duty of the judicial department to say what the law is. . . . If two laws conflict with each other, the courts must decide on the operation of each. So, if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide the case conformably to the law, disregarding the constitution, or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. . . . If, then, the courts are to regard the constitution, and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act of the legislature, must govern the case to which they both apply. . . . It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it."

In the case of *Cohen v. Virginia*, 6 Wheat., 264, the great Chief Justice, again discussing this question, said: "It is most true that this court will not take jurisdiction if it should not; but it is equally true that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution. We cannot pass it by because it is doubtful. With whatever difficulties a case may be attended, we must decide it if it is brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution. Questions may occur which we would gladly avoid, but we cannot avoid them. All we can do is to exercise our best judgment and conscientiously to perform our duty."

This language is quoted in the recent important case, *Ex parte Young*, 209 U. S., 123-204. In that case Mr. Justice Peckham, speaking for the court, said: "The question of jurisdiction, whether of the circuit court or of this court, is frequently a delicate matter

to deal with. . . . It is a question, however, which we are called upon, and which it is our duty, to decide."

Article 6 of the constitution provides that, "This constitution and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding." And in article 3 of the constitution it is provided that the judicial power of the United States, "shall be invested in one supreme court and in such inferior courts as the congress may from time to time ordain and establish." The congress has ordained and established the circuit courts of the United States and has conferred upon them jurisdiction to pass upon and determine, in the first instance, whether any act of congress or of any state is in conflict with the constitution of the United States, and to declare it null and void, if it is. The act of congress establishing the circuit courts, gives them jurisdiction of controversies between citizens of different states where the jurisdictional amount is involved, or where the case arises under the constitution or laws of the United States. Cases are held to arise under the constitution or laws of the United States when it appears from the questions involved that some right will be defeated by one construction of the constitution or sustained by another.

The constitution of the United States has been the supreme law of the land for more than a century and a quarter, and during all of this time the Supreme Court of the United States has, when the question has been brought before it for decision, exercised the jurisdiction to declare the legislation of congress unconstitutional and void, as well as that of the states, whenever it was found to conflict with the constitution of the United States. The highest courts of the states have followed the Supreme Court of the United States in this construction of the constitution where they have not gone ahead of it in such construction. In fact, the Supreme Court of the United States was not the first court to decide that the judiciary is empowered to declare unconstitutional and void legislation which contravened the constitution. The courts of New Jersey were, perhaps, the first to announce this principle, but there shortly followed the courts of Virginia, South Carolina, Rhode Island, Pennsylvania, North Carolina and others.

We must conclude, I think, from the foregoing that the federal courts are clothed, under the constitution, with power to declare

the unconstitutionality of state action, whether legislative or judicial, and to determine whether it deprives the person affected of life, liberty or property without due process of law, or denies to him the equal protection of the laws. Until the adoption of the fourteenth amendment to the constitution of the United States, by which the states were forbidden to deprive any person of life, liberty or property without due process of law, or to deny to any person the equal protection of the laws, the federal authorities were powerless to prevent state action. Reliance for the protection of life, liberty and property had, until then, to be placed entirely upon the state laws; and until then the state laws were believed to be sufficient to afford such protection. Following the civil war of 1861-1865 and the emancipation of the negro race in the south, however, the dominant party, then overwhelmingly in control of political affairs in the country, conceived that it was necessary for the protection of the negro that there should be added to the constitution of the United States an amendment giving the national government the power to control the states in their dealings with the negro; and, for the purpose of acquiring this power to so control the states. the fourteenth amendment was adopted, and became a most important part of the supreme law of the land. The far reaching importance of this amendment was not at the time fully realized, certainly not generally so; but it was soon seen that because of its application to *all persons* the federal powers were greatly increased, particularly in respect to control of state action, in the most vital and important concerns of the people. The most ardent supporters of a strong central government never dreamed that the provisions of this amendment could be incorporated into the constitution originally, and nothing of the kind was then proposed. At the time of the adoption of the constitution it is not believed that any one of the original states would have voted for its adoption with this amendment in it.

The fourteenth amendment was the offspring of the bitter feeling engendered by the bloodiest war of modern times. It must be admitted, however, that "it is now the broadest and strongest guarantee of fundamental rights under our system of government." The citizen can now rely upon the uniform decisions of the highest court in the land to determine what are the privileges and immunities guaranteed to him by this amendment, which cannot be abridged by the states; and every person within the territorial limits of the United States can now, in like manner, rely upon the uniform deci-

sions of this court for protection of life, liberty and property against the action of the states or any of them without due process of law.

The increased control of state activities by the federal courts consequent upon the adoption of the fourteenth amendment is seen in the early and continued crowded condition of the dockets of the Supreme Court of the United States with cases arising out of it requiring its construction and application. While many matters of controversy concerning this amendment have been settled by that court, there are almost constantly arising new contentions of great importance, some of them involving questions of the powers of the states, under the constitution, to control affairs within their territorial limits, and the right and duty of the federal authorities, at the instance of an individual litigant, to decide the contention. A natural feeling of state pride, as well as of the state's interest in the action of its legislature, its courts and officials, have heretofore, in some instances, brought about sharp and sometimes bitter controversies; and this may be expected to continue as long as like conditions arise. In the development of the country by the application of steam and electric power, mechanical invention, the opening of the plains and the forests to settlement for homes and for agriculture, the utilization of our rivers for the purposes of transportation, and the rapid growth of industries all over the land, perplexing questions have arisen and will necessarily continue to arise as to the construction and application of the principles of the fourteenth amendment, which must be settled by the Supreme Court of the United States, made by the constitution the final arbiter of the same.

My confidence in the Supreme Court of the United States and my faith in the people, their high regard for the law, their justified confidence in our judiciary, and their love of peace impel me to say that I look forward to the future with a firm conviction that the Supreme Court of the United States will continue to construe and apply the constitution to conditions as they may arise, preserving, with due regard to the states, all the rights reserved to them, at the same time strictly maintaining and upholding the powers delegated to the national government; that our continued prosperity is assured and that domestic peace is permanent.

The attention of the country has been recently sharply called to the matter of control of state activities by the federal courts in several cases decided by the Supreme Court. Several states, notably Minnesota, Alabama, North Carolina and Virginia, by means of

statutes and constitutional enactments, undertook to regulate and control the railroads being operated in their respective territories; particularly to fix the maximum rates of charges for the transportation of passengers and freights from one point to another within their boundaries. These rates were, it was contended by the railroads, so low that, if enforced, the result would be the confiscation of their property; that thereby they would be deprived of their property without due process of law, and would be denied the equal protection of the laws. Attempts were made by the officials of these various states to enforce these statutes and constitutional provisions, when the railroad companies instituted suits in the federal courts, asking that the state's officials, charged with the duty under the laws of the states, of enforcing these rates, be enjoined from carrying the same into operation; thus raising the issue squarely as to the constitutionality of these statutes and constitutional provisions; that is, whether the same were violative of the fourteenth amendment, in that they would operate to deprive the railroads of their property without due process of law and would deny to them the equal protection of the laws.

Among the early cases involving the construction of the fourteenth amendment by the Supreme Court of the United States was the case of *Munn v. Illinois*, 94 U. S., 43-47, decided in 1877. Chief Justice Waite said, in rendering the opinion in this case, speaking of the power of the state to fix maximum rates of charges by the elevator companies in the city of Chicago, "We know that this is a power which may be abused; but that is no argument against its existence. For protection against abuses by legislatures the people must resort to the polls, not to the courts." He again said in one of the Granger Cases, *Piek v. Chicago, etc., Ry. Co.*, 94 U. S., 164-178, "Where property has been clothed with a public interest, the legislature may fix a limit to that which in law shall be reasonable for its use. This limit binds the courts as well as the people. If it has been improperly fixed, the legislature, not the courts, must be appealed to for the change." Unquestionably, it is sound law that the states, acting through their legislatures or other agencies, such as commissions, can establish intrastate rates of charges controlling and regulating public service corporations—those in which the public have an interest; but they must be such as are reasonable, not such as confiscate the property of the corporations, not such as deprive them of their property without due process of law or as deny to them the

equal protection of the laws. It was only necessary for the court in the case of *Munn v. Illinois* to decide this much, as it was held in that case that the rates of charges fixed by the Illinois act were reasonable. This case and the case of *Piek v. Chicago*, caused consternation to the business interests of the country and invited the legislatures of many of the states to enact such statutes of oppression against corporations, particularly against railroad corporations, that for a time the prosperity of the country was very seriously effected. Capitalists refused to invest their money in the building of new railroads or in the securities of the old ones. In this condition of affairs the cases known as the Railroad Commission Cases, *Stone v. Farmers Loan & Trust Company*, 116 U. S., 307-347, were decided by the Supreme Court, modifying and limiting the case of *Munn v. Illinois*. Chief Justice Waite, again speaking for the court, said, "This power to repudiate is not a power to destroy, and limitation is not the equivalent of confiscation." This case was followed by many others deciding that the legislatures of the states must be restricted to reasonable limits in the establishment of rates of charges by railroads for the transportation of passengers and freight; and that the Supreme Court had the jurisdiction ultimately to review and determine for itself, as a judicial question, the reasonableness of such rates, and whether they would operate to deprive the railroad companies of their property without due process of law, or to deprive them of the equal protection of the laws. In the case of *Chicago, etc., Railway Company v. Minnesota*, 134 U. S., 418, the court held that the legislation, called in question in that case, was unconstitutional and void on the ground that the rates fixed by it were unreasonable. In the case of *Reagan v. Farmers Loan & Trust Company*, 154 U. S. 362, this doctrine was clearly and distinctly announced, Mr. Justice Brewer writing the opinion for the whole court; and in the case of *Covington v. Sanford*, 164 U. S., 578, Mr. Justice Harland, speaking for an unanimous court, said, "There is remedy in the courts for relief against legislation establishing a tariff of rates which is so unreasonable as to practically destroy the value of the property of companies engaged in the carrying business, and that especially may the courts of the United States treat such a question as a judicial one and hold such acts of legislation to be in conflict with the constitution of the United States as depriving the companies of their property without due process of law and as depriving them of the equal protection of the laws."

In the case of *Smythe v. Ames*, 169 U. S., 466-546, known as the Nebraska Maximum Rate Case, it was held that the state had the right to fix reasonable rates of charges, but it was said, "The idea that any legislature, state or federal, can conclusively determine for the people and the courts that what it may enact in the form of law, or what it authorizes its agents to do, is consistent with fundamental law, is in opposition to our institutions, as the duty rests on all courts, federal and state, when their jurisdiction is properly invoked, to see to it that no right secured by the supreme law of the land is impaired or destroyed by legislation. This function and duty of the judiciary distinguishes the American system from all other systems of government. The perpetuity of our institutions and the liberty which is enjoyed under them, depend, in no small degree, upon the power given the judiciary to declare null and void all legislation that is clearly repugnant to the supreme law of the land."

The last cases upon this question, decided by the Supreme Court of the United States, are *Ex Parte Young*, 209 U. S., 123-204, and *Hunter v. Wood*, 209 U. S., 205-211. In the first of these cases it was insisted that the question of whether the rates fixed by the Minnesota act, or the railroad commission, was so low as to be confiscatory, and that this question was not a federal question. The court said that, "The question really to be determined under this objection is whether the acts of the legislature and the orders of the railroad commission, if enforced, would take property without due process of law; and although that question might incidentally involve a question of fact, its solution, nevertheless, is one which raises a federal question. . . . The sufficiency of rates with reference to the federal constitution is a judicial question and one over which federal courts have jurisdiction by reason of its federal nature." These cases decided another point of great interest and importance. The legislatures of the states of Minnesota and North Carolina had not only fixed rates so low that the railroad companies resisted them as being confiscatory, but they had prescribed for a violation of the rate clauses of the acts, as it was claimed by the railroads, very excessive and exorbitant fines, penalties, forfeitures and imprisonment; and the contention was made by the railroads that such fines, penalties and forfeitures were so excessive and exorbitant that they were in violation of and repugnant to the fourteenth amendment. The Supreme Court had not before passed upon this contention although

it had been discussed by it in another case. After a most thorough and exhaustive argument and consideration of the question, it was held, with almost unanimity, only one of the judges dissenting, "That the provisions of the acts relating to the enforcements of the rates, either for freight or passengers, by imposing such enormous fines and possible imprisonment as a result of an unsuccessful effort to test the validity of the laws themselves, are unconstitutional on their face, and without regard to the question of the insufficiency of those rates."

There is nothing, it is believed, in the Virginia Rate Cases, recently decided by the Supreme Court of the United States, to modify the cases cited in this paper. Those cases do, however, show the considerate regard entertained by the Supreme Court for the state courts; for the principal questions involved in these cases are left to be first determined by the highest court of the state.

In concluding this paper, I wish to say that it is my belief that the fourteenth amendment to the constitution of the United States which delegates to the federal supreme court the ultimate right and power to mark out the line separating the powers of the states from those of the national government, is the means whereby our system of government will be perpetuated and the freedom and liberty of the people will be preserved.

INCREASE OF FEDERAL POWER UNDER THE COMMERCE CLAUSE OF THE FEDERAL CONSTITUTION

BY WILLIAM A. ANDERSON

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Any discussion of a subject of so much interest and importance as that which has been assigned to me by the courtesy of the Association, within the limit of time allowed, must necessarily be exceedingly condensed, and more or less partial and superficial.

It is doubtful whether 12 words have ever been written in any law which have been fraught with more momentous consequences, than those found in Section 8 of Article I of the Constitution of our country which declare that:

“The Congress shall have power . . . to regulate commerce among the several States.”

Among the causes which led up to the formation of the Constitution and the establishment of the Federal government under it, the following may be mentioned as the most potential:

1. The impotency of the Confederacy to protect international and interstate commerce, and navigation over the high seas, and upon the navigable waters of the several States.
2. The insolvency of the Confederacy because of its abject dependence upon the States for its revenues.
3. The injury to the States from the abuse by some of them of the power to tax and control interstate traffic.
4. The imbecility of the Confederacy in respect to the protection of the States against the injurious or hostile acts of foreign nations, and from domestic violence.

A study of the history of the times will show that among these causes, the first (the protection and promotion of international and interstate navigation and commerce) was not the least influential; but such study will also demonstrate that the control of commerce or trade *within* the States was never once considered as a possible attribute of the general government. The regulation of *overland* traffic *between* the States, received little, if any, attention from the

makers of the Constitution, and there never was any idea among the framers of that instrument that Congress or any other Federal authority would ever have any control whatever over the internal traffic and other domestic affairs of the people of the States.

An examination of the debates in the Federal and State Conventions of 1787 and 1788, and of contemporary discussions in the several States, will show that the Constitution would have absolutely failed of requisite support had it been supposed that it conferred any such powers on Congress, or on any other department of the general government.

On the other hand, the desire and purpose that the general government should be clothed with plenary and exclusive power to regulate all intercourse with foreign countries, was practically unanimous.

Commerce over the seas had been paralyzed for the want of such protection and regulation as could only be secured through the agency of some general and paramount authority clothed with exclusive power to control all intercourse between foreign nations and the several States.

The long struggle of the Colonies against the arbitrary rule of the British Crown and Parliament over their affairs, a struggle which had begun in Virginia in the second decade after the settlement at Jamestown, and which with varying fortunes, had continued in this and other Colonies, until it culminated in the Revolution, had had but one dominant purpose.

That purpose was to win for the people of each of those separate Colonies the priceless boon of local self government.

That contest was not begun or continued through more than 150 years in order that a consolidated government by all of the Colonies over the people of each Colony, should take the place of the domination of the British Crown.

No, the one motive of that long struggle was that the people of Massachusetts should govern the people of Massachusetts, that the people of New York should govern the people of New York, the people of Virginia should govern the people of Virginia, and so on as to the other Colonies.

There is nothing in human history which can be predicated with greater confidence in its truth, than the proposition that the American Revolution would never have been begun, or if begun would have speedily ended in disaster, had the people of the several Colonies believed that, if they succeeded in throwing off British domination,

there would be established over them in its place the supreme control of a centralized government made up by the consolidation of all the States.

No men have ever lived who had a more just or more accurate conception of the truth, that local self government is of the very essence of liberty, than the men who led and guided those Colonies during all that formative period of our history.

With a few conspicuous exceptions, like Alexander Hamilton, they accepted the truth which history had taught, that a centralized government with supreme control over the affairs of the people of the vast territory which it was the inevitable destiny of these States to dominate, whether such government should be, in form, a consolidated republic or not, would necessarily, constituted as human nature is, develop into a consolidated despotism over the population subject to its sway.

From the beginning to the close of the Revolution, and long after the Colonies had been recognized as free, sovereign, and independent States, the principle of segregation of sovereignty and of supreme governmental powers, instead of the consolidation of those powers in a central government, generally dominated the popular mind and heart, from New Hampshire to Georgia.

Under the potential leadership of Washington, supported by Hamilton, Madison, James Wilson, Edmund Randolph, John Adams, and others of the leading statesmen of the Revolution, a common peril brought about a change; but a change with essential limitation, and one which it was never designed should result in the overthrow of local self government.

The course of events after the Colonies had become independent States, demonstrated to the architects of the American Republic, that unless a government could be established which would deal directly with the individual citizen, without the interposition of the States as intermediaries, as to matters of general concern to all the States,—a government clothed with supreme authority as to all matters involving relations with foreign powers, and with power to secure peace abroad and tranquillity at home, should be established, then the lately enfranchised States would inevitably become the victims of commercial antagonisms between themselves, and would ultimately lose the liberties which they had wrested from the grasp of the British King.

And so the Constitution of 1788 was a compromise of divergent and

conflicting views, and a resultant from the logic of inexorable conditions.

While its great purpose was to create a government national and supreme as to all of the relations of the States with foreign powers, and as to all matters of general concern to all of the States, it was equally its supreme purpose and effect to leave with the States, sovereignty and supreme control over all matters of local concern, and over all of their domestic affairs, with only such limitations upon those powers as were deemed just and proper in regard to subjects which equally affected the well-being of the people of all the States, such as the prohibition of bills of attainder, *ex post facto* laws, and of laws impairing the obligation of contracts.

Nevertheless, the powers delegated to the general government were complex in character, vast in importance, and greater in their scope and in their extent than could be well and efficiently exercised by its several departments, however ably they might be manned.

As was pointed out by Mr. Webster in his argument in the great case of Gibbons vs. Ogdens, the first case adjudicated by the Supreme Court which involved the Commerce Clause of the Constitution, the Constitution contains an *enumeration* and not a *definition* of the powers delegated to Congress.

This necessarily devolved upon the Courts, and ultimately upon the Supreme Court, the function of defining each grant of power.

It is evident that in order to ascertain the character and scope of the powers conferred upon Congress by the Commerce Clause, it was essential to define what was embraced by the word "Commerce" within the meaning of that provision of the Constitution, and to determine the extent to which Congress was granted control over that subject.

It is manifest that this presented a subject of very great moment, and opened up a wide field of discussion and adjudication for the consideration of the Court.

The main question, and questions cognate to it, have occupied the attention of the State and Federal Courts of last resort in hundreds of cases since Gibbons vs. Ogdens, decided in 1824, down to the present year.

No cases have arisen, the decision of which involved the exercise of a wider discretion, or the adjudication of questions of greater importance, by the Supreme Court.

There was room for wide difference of opinion as to the import of the word "Commerce."

It might have been plausibly contended that, in its broadest sense, commerce embraces all of the business transactions and intercourse between man and man. It would thus include not only traffic, commercial intercourse, and transportation, but all business communications, and every species of contract; and if the regulation of commerce carried with it also the regulation of the means and agencies of commerce, the grant would also embrace the regulation of interstate railways, telegraph and telephone lines, and of the great lines and modes of communication, and business dealings among the citizens of the different States; and if, as has been contended (and as has been decided by the Courts to be true with certain qualifications and under certain conditions) the grant was *exclusive*, it will be apparent that the subjects which this clause would take out of the jurisdiction of the States and transfer to the jurisdiction of the Federal Courts, would be of immense importance and extent, and of almost infinite complexity and variety. Indeed, thus interpreted, it would leave little or nothing to the jurisdiction of the State in reference to transactions between their own citizens and citizens of other States.

Fortunately, not only for the State, but for the Federal governments, the Supreme Court of the United States, the final arbiter of those questions, has given a less comprehensive interpretation to the word "Commerce" than might have been assigned to it.

Following the reasoning of the great Chief Justice in *Gibbons vs. Ogden*, and *Brown vs. State of Maryland*, that Court has pretty well fixed the limitations of this power and confined it to the regulation of interstate *commercial* intercourse, traffic, navigation, and transportation, and of commercial lines of transmission, such as interstate telegraph lines, assimilating the meaning of the word "Commerce" as nearly as could be ascertained, to the meaning and sense in which it was understood and used by the framers of the Constitution.

Thus interpreted, it excludes insurance contracts, contracts of sale and barter, and for the lending of money, and a great mass of other transactions, which, though in a sense commercial contracts, were not considered to be within the meaning of the word "Commerce" as used in the Constitution.

Nevertheless, interpreted as the clause has been by the Supreme Court, it has clothed the Federal Government with a scope and character of jurisdiction over affairs permeating the different States, of the greatest importance to them, which it cannot be supposed

that the framers of the Constitution could ever have intended to be embraced in this grant of power.

This has resulted in large measure from the marvelous change in the modes of transportation and of communication which have been discovered and introduced since the Constitution was written, the nature and effect of which the makers of that instrument could not by possibility have anticipated.

The only means of communication by water of which they knew anything, was by vessels propelled by wind, by poles, or by oars.

The only over-land means of communication known to them, was by wagons, or other vehicles, or pack-horses over turnpikes and roads.

Such turnpikes and roads do not seem, from the language of Chief Justice Marshall in *Gibbons vs. Ogden*, to have been embraced within the Commerce Clause as interpreted by him. At all events, their regulation was, according to his view, undoubtedly left with the States.

The marvelous growth in the population, industrial activities, products and traffic of the country, brought about in large measure by the introduction of steam and electricity as agencies of communication and transportation, have built up enormous interests, which, while they deeply concern, and are intimately wrapped up with, the affairs of the people of the several States, have also such inter-state relations that the Courts have felt constrained to consider them as being parts of commerce among the States, and subject to congressional regulation.

This has necessarily resulted in the enormous enhancement of Federal power.

Much has been said of what, by way of criticism of the Courts, has been sometimes termed "Court made law." Such criticism is just whenever the Courts, departing from their legitimate functions, undertake by construction to change the intentment and meaning of statutory or fundamental enactments; but when the Courts in the discharge of the legitimate judicial function of interpretation, undertake to fairly and conscientiously construe the terms of statutes, or of Constitutions, as has been uniformly true of the Supreme Court of the United States in its dealings with the Commerce Clause, any such criticism would be unwarranted.

Fortunately, one question has been, it is to be hoped, in large part conclusively determined and put at rest by the adjudications of the

Federal Courts, namely, what are the limitations of the powers of the Federal and the State governments respectively over commerce? It may be fairly concluded from these decisions, that Federal regulation is confined to that commerce, and to those facilities and modes of communication which concern the people of two or more States, and which the National government can more efficiently regulate, because the operation of its statutes is not limited to State lines; and that the jurisdiction of the States embraces that commerce, and those facilities and means of communication, which lie wholly within the State, and more immediately concern its people, and which the State can more efficiently regulate, because their situs is within the territorial jurisdiction of the State, and because they are susceptible of more efficient regulation by local authorities.

Although from the operation of causes such as have been suggested the Commerce Clause vastly increased the jurisdiction and the powers of the Federal government far beyond any conception or dream which could have entered the minds of the makers of the Constitution, it must be said that, by reason of the conscientious and, in a great majority of its adjudications upon these and cognate questions, the generally conservative and wise exercise of judicial power by the Supreme Court of the United States, much has been done to safeguard the rights, liberties, and essential governmental powers of the States, and of the people of the States, and to prevent the National government from being changed from a Federal Republic into a consolidated Empire.

There is a subject in some of its aspects so related to that which I have here imperfectly outlined, that it may be properly mentioned in this connection.

It is a subject which challenges the most earnest consideration of thoughtful and patriotic men.

It is the interference with, and direct or indirect regulation of, commerce within the States by the United States Courts. This Federal jurisdiction to which I now refer, has been deduced, not from "the Commerce Clause," but from the 14th Amendment.

Under the construction and effect given to that Amendment, the powers of the Federal government—particularly of the Federal judiciary—have been extended over the internal affairs of the States, and particularly over commerce wholly within the States, to an extent which threatens the safety, the governmental rights, and the well being of the States.

It is more the manner in which this Federal jurisdiction is exercised than the fact that the jurisdiction is asserted, which is the occasion of just complaint.

It is the interference by the subordinate Judges and Courts of the United States by summary injunction with the acts and proceedings of the duly constituted legislative, executive, and judicial bodies of the States as to matters of public concern entirely within the States.

This power, as reposed in these subordinate Courts, is likely to be and is undoubtedly abused, to the wrong and injury of the people of the States, producing friction and antagonisms, and sometimes engendering a rankling sense of injustice and wrong.

Upon an *ex parte* statement of facts made in a bill, supported by a general affidavit, and generally by other *ex parte* affidavits, the laws enacted by State legislatures, and the carefully considered orders and judgments of railroad and corporation commissions, which may be entered after exhaustive judicial investigations, trials, and consideration, are held up by the order of a Judge who, however learned and able and upright, is still not infallible; and the State is compelled, either to passively submit, or else, under unequal conditions, to engage in enormously expensive litigation with powerful litigants, represented by a staff of the ablest counsel in the country, and supported by technical and expert witnesses, who however upright, are generally warm partisans of the litigants by whom they are employed.

Of course, the transportation companies and others whose rights under the State or National Constitutions have been, or are considered by them to have been, invaded by the laws or acts of the constituted authorities of a State, *should have ample opportunity to obtain redress against such wrongs.*

Such redress can be had from the State Courts, and if they fail to secure to any company or citizen any right guaranteed by the National Constitution, such injustice could be remedied by invoking the jurisdiction of the Supreme Court of the United States.

I am one of those who have lost faith, neither in the Republic nor in the States. I firmly believe that in the interest of all States, and of the welfare of all of the people of our "Commonwealth of Commonwealths," the States and their people are the safest repositories and ultimately the only safe repositories, of power over all persons and corporations within their respective jurisdictions; that the State

tribunals can be trusted to deal uprightly and to decide justly, and that the surest way to ensure justice from the State tribunals and authorities is to repose such trust and confidence in them.

Under the course of procedure now sanctioned by the Federal Courts under the judiciary acts of Congress, a single Judge of some subordinate Court of the United States may tie up a law or solemn act of some legislature or judicial tribunal of a State, in a case in which such Judge first to a limited extent and in a qualified sense prejudges, and then tries, and thus interfere with and control the State in the matter of the regulation of the internal commerce and other domestic affairs of the State.

With the highest respect for the Circuit and District Judges of the United States, and with an affectionate regard for some of them whom it has been my privilege to know personally and well, and with the utmost deference for able and worthy gentlemen who entertain different views, I would venture most earnestly to suggest that if any direct jurisdiction is to be given to the subordinate Federal Courts over the laws and acts of the legislatures and tribunals of the States in the matter of the regulation of the internal commerce of the States, then it should not be by the summary process of injunction.

As the laws of the United States in the premises are now administered, the subordinate Courts of the United States are in effect given power, in a large sense, to regulate and control the internal commerce and other domestic affairs of the States, in particulars and to an extent which was never contemplated by the makers of the American Republic, and which is in conflict with the letter and the spirit of the great instrument of government which our fathers established as the charter of our liberties, and the guaranty of "an indissoluble Union of indestructible States."

AERIAL NAVIGATION IN ITS RELATION TO INTERNATIONAL LAW

BY ARTHUR K. KUHN

Of the New York Bar

It is not my purpose to discuss problems of either international or municipal law which are merely speculative in character. My discussion will be limited to the problems of law presented by what invention has already accomplished, or conditions which are reasonably certain to flow from its achievements. Whenever mechanical, chemical, or electrical science introduces new forces into the life of man, it may reasonably be conceived to be the task of jurisprudence to adjust and coordinate the legal relations of both states and individuals under the new conditions. Nor is it always the part of wisdom to disregard formulative methods by relying on the application of principles derived from an old régime.

It has been urged against our own Constitution that, being written, and difficult of amendment, its provisions tend to become unfitted to the changing conditions of life. The advancement of science has made state boundaries merely political where they once were social as well. One of the most difficult duties which our Federal courts have to discharge is the interpretation of the brief, simple phrases of the Constitution to be adequate to the needs of the nation, once a sparsely settled community with slow, meager and irregular means of communication, now a vast commonwealth bound together by arteries of speedy and regular railroad transportation and by immediate communication through telegraph and telephone.

So, too, in the international world, the increase in number and efficiency of the means of transportation and intercommunication, the application of new forces applied to the conduct of warfare and the pursuit of commerce in times of peace, create new conditions which must be analyzed and dealt with in a manner satisfactory to the demands of justice and consistent with a humane conduct of life among men and nations.

The beginnings of aërial navigation go back some two hundred years. The recent achievement of science, however, consists, as we all know, in the ability to launch aircraft, whether in the form of balloons, lighter than the air, or in the form of aëroplanes, or similar devices, heavier than the air, which shall answer the will of a navigator and proceed to a distant point with passengers or light freight, or both. This much has been accomplished. That it may ultimately serve the purposes of commerce in a larger sense, though not negatived, has not yet been demonstrated, nor is it necessary for the purpose of the present discussion.

There is a general belief that aërial navigation is in its early infancy, and almost sure to make rapid progress. Large sums of money and great expenditures of time and of intelligent effort are being devoted to its further development in many countries. In Germany, the unusual national movement in its support, which took place during the current year, has demonstrated the intensity of the popular will that it shall succeed. The governments of the great Powers are vigorously cultivating the art for use in the army and navy and so great has been the impetus given to it from this source, that it will undoubtedly play an important rôle in the next great war. The Geneva convention, first applicable only to land warfare, has been extended, wherever appropriate, to maritime conflict and the necessity for a further extension to aërial warfare would seem to be imminent.

It would seem timely therefore to consider the introduction of aërial navigation into the life of man in some of its legal aspects. Jurisprudence follows the path of science as the flag of a nation follows the territorial explorations of its subjects. Thus, as the airspace comes under the domination and control of man, it is embraced within the jurisdiction of law. The subject has already received the attention of European publicists. The Institute of International Law has a *projet de loi* before it; Meili has written an interesting monograph;¹ Grünwald has published a more extensive work;² an entire part is devoted to it in the manual of international public law recently published by Bonfils and Fauchille. No discussion by a British or American authority has come to my notice except in connection with the limited number of problems considered by the Hague Peace Conferences.

¹ *Das Luftschiff im internen Recht und Völkerrecht.*

² *Das Luftschiff in völkerrechtlicher und strafrechtlicher Beziehung.*

IN TIME OF PEACE

We are at the outset confronted with the question whether the navigation of the airspace should not be conducted exclusively or principally by governmental agencies. The hazardous nature of the traffic, its menace to the maintenance of customs barriers, its adaptability for postal communication and its importance to the protection of sovereignty, are considerations which favor regulation if not complete expropriation by the state.

Countries which have heretofore pursued the policy of governmental ownership of public utilities will assuredly follow that practice at least in respect of regular lines of travel. This policy may prevail even in countries like our own, which have till now followed the general principle of private ownership under a more or less extensive public control. There are striking differences between the intercourse contemplated by an extensive exploitation of the airspace and the operation of vehicles upon a public highway or of cars upon a railroad. The due performance of international obligations, which we will consider later, may in itself require either governmental operation of all regular lines of aircraft or a strict governmental registry and control.

It would seem essential to subject the traffic to concessionary control if for no other reason than that of public safety. The prerequisites for the franchise and the obligations to be undertaken in connection with it are naturally the subject of scientific rather than juristic determination. A system of governmental inspection would seem to suggest itself like that now prevailing over ships of the sea. In fact, this analogy is suggested by many elements in the construction and operation of the most successful aircraft thus far built. This would also indicate what indeed is a probable legislative result, viz., a registration of all aircraft in a particular locality and a nationality symbolized in the carrying of the flag.

A draft regulation for general convention acceptance was elaborated by Fauchille for the Institute of International Law at its Brussels Conference of 1902, under the title "*projet de règlement sur le régime juridique des aérostats.*"⁸ This proposes the constant display of the flag and enumerates signals to distinguish public and military from private craft (Art. 2). It is also provided that the commander shall carry official documents comprising an extract of official registry,

⁸ *Annuaire of the Institute*, xix, 1902, pp. 19-86.

a list of the crew, the brevet, charter party, manifest and log (Art. 4). Further provisions of a detailed character have been embodied in the project, many of which seem to us premature as legislative problems at this time. It is sufficient to acknowledge that the navigation of the air is a matter of public concern, and that its advancement as a medium of commerce will depend upon the wisdom and breadth of view which the organs of government exercise in making laws and regulations for its guidance.

Before discussing international rights and obligations it may be well to consider the extent of private right in the airspace. If indeed the owner of land has a proprietary right in all the air abutting in a vertical direction, the establishment of regular lines of aerial travel would require an extensive exercise of the right of eminent domain for the expropriation of easements. The Roman law recognized, in terms at least, an unlimited right of private property in the air above the soil. *Cujus est solum, ejus est usque ad cælum.* The common law seems to have adopted this doctrine from Roman sources.⁴ In some of the less recent European codes, the ancient theory is in fact enacted into positive legislation. The Civil Code of Austria, for example (§297) designates as immovable chattels, "houses and other structures together with the airspace over them in a vertical direction," thus constituting the airspace a real right of appurtenance.

But modifications have been introduced into later codes. The Code of the Canton of Grisons provides (§185):

"Property in land extends to the airspace (above) and the earth beneath, so far as these may be of productive value to the owner."

The German Civil Code (§905) recognizes property in the airspace, but denies to the owner any right or remedy to forbid trespass at such a height or depth as can cause him no material injury. It has been held that the owner of land cannot legally object to telephone wires strung across it at such a height as not to interfere with its reasonable enjoyment. The principle of modified right has been enacted also in the new Swiss Civil Code (§667), and it may indeed be said to be the modern doctrine of continental Europe.

There has been no such modification in Anglo-American legal practice. I fail to find any precedents which bear directly on the present discussion, but the cases of overhanging branches and tres-

⁴ Coke Littleton, 4a; 2 Blackstone Comm. 18.

passing wires all seem to confirm absolute ownership. It may well be, however, that courts will disregard technical trespass by aircraft under the rule of *de minimis* and reach similar results without the intervention of new legislation.

The rights and obligations of states *inter se* are analogously dependent upon the extent of sovereignty which each enjoys in the airspace over its territory. As the air is a great fluid of resistance like the sea, we are invited to draw comparisons between the two. In fact, the reasons advanced by Grotius for denying all sovereignty over the sea apply equally to the airspace. All property, says he, is grounded upon occupation, which requires that movables shall be seized and immovables enclosed.⁵ But this, a result of Roman ideas of private property, has long given way to the modern theory which is that the sea is free because no state is able permanently to enforce its sovereignty over it, and occupation must be effective in order to be valid. Therein lies the difference, for the state beneath the airspace may make its right of property effective by control. Furthermore, there is a direct interest on the part of the state in the abutting airspace if for no other reason than the law of gravity. Protection to the health and safety of its subjects, to its customs and immigration barriers and to its political integrity will always require the reservation of certain rights.

We cannot approve, therefore, of the broad terms of the provision as framed by the Institute of International Law at its Ghent session of 1906 (*Régime des Aérostats et de la Télégraphie sans fil*. Art. 1.): "The air is free. States have only such rights over it in time of peace (and in time of war) as are necessary for their conservation."

Of course, this does not assume to be a statement of existing international law; but considering the free development of aerial traffic in the interest of progress, the Institute has made this suggestion for future conventional regulation. But even in this light the provision is too radical because inconsistent with the actual trend of international law. The right of the craft of one nation freely to traverse the airspace of another may be compared with that of the vessels of one state free to navigate the river of a coriparian state especially when the river becomes navigable within its own territory. It is true that this has been asserted as a right of international law,⁶

⁵ *Mare liberum*, cap. 5.

⁶ Bluntschli, §314; Calvo, §§259, 290-291. Wheaton calls it an imperfect right, only to be effectuated by convention.

and even the United States relied upon it at one period of its history. The doctrine generally accepted and acted upon, however, is stated by Phillimore and Hall, both of whom predicate a right of exclusion.⁷ They admit that the exercise of it would be harsh and unjustifiable unless the necessities of the state so required and say that the ordinary rule of law should be waived in favor of the general good.

For the reason given, sovereignty over the airspace is comparable with that exercised over territorial waters, and not with that over the high seas, and therefore even conventional regulation should begin by an admission of sovereignty and be followed by an enumeration of such easements as enlightened policy may dictate.

Fauchille, Rolland⁸ and others have suggested that the states should agree upon a zone of isolation above which traffic shall be free. Within it, all craft shall comply with fixed regulations such as in respect of the signals to be given and the place of descent, and public craft must obtain the consent of the local state through diplomatic channels. But an attempt to set up artificial zones seems unwise if for no other reason than that of the topography of the earth and the limitation of atmosphere available for human life.

The sphere of sovereignty should be determined not by arithmetical standards but by the safety and convenience of the state.

AS TO CRIMINAL JURISDICTION

In the administration of criminal justice international conflicts of law and jurisdiction will be rendered more numerous as well as more difficult by the advent of aerial navigation. A new instrument is presented by means of which crimes of violence may be committed while capture is rendered more difficult. Offenses may be committed from voyaging aircraft against persons or property on the land surface of the earth, on the high seas, or on other aircraft, or conversely by persons on the land or sea surface of the earth against persons or property on voyaging aircraft. In regard to both classes, a doubt might arise as to whether, as the case may be, an offense has been committed within the territory of the state below, or upon the high seas, within the present meaning of these terms. Let us avoid

⁷ Hall, International Law, 5th ed., p. 140.

⁸ *Revue de droit international public*, xiii, 68, in which it is suggested that the zone of isolation shall extend to a height of 330 meters (the altitude of the Eiffel tower).

doctrinaire discussion and assume that it has; even then it would in most cases be unsatisfactory to rely solely upon the jurisdiction of the local state because voyaging aircraft readily escape, and in the case of an offense begun and completed in the air, the peace of that state may be violated in only a very narrow sense.

To meet the situation it has been proposed to extend by convention the "floating territory" theory to aircraft in the following terms (Fauchille, Art. 15):

"Crimes and delicts committed on board of aircraft by members of the crew or other persons on board, no matter in what part of the airspace, fall under the competence of the tribunals of the nation to which the aircraft belongs and shall be judged according to the laws of such nation, no matter what be the nationality of the authors (of the crime) or the victims (thereof)."

This would deprive the local state of all jurisdiction and on that account would probably never obtain official confirmation. The jurisdiction should be concurrent and not exclusive, just as it is, indeed, in respect to offenses committed on foreign vessels in territorial waters. We approve, however, of the further provision (Art. 15, 2) wherein an offense directed against the security or fisc of a state, such as conspiracy, treason, counterfeiting, etc., is referred to the tribunals of that state, no matter where the offense was committed. Indeed this is now the prevailing rule of international law wherever the offender is arrested within the injured state.⁹ The new feature of the project consists in that it contemplates a surrender to the injured state.

We conclude this branch of the subject by noting the suggestion made by a European authority¹⁰ that the problems presented by the introduction of aerial navigation may prove to be an initial impetus to a movement between the nations toward a general conventional regulation of the conflicts of jurisdiction in respect of crimes.

IN TIME OF WAR

Along with the subjects submitted for discussion to the First Hague Conference by the circular letter of Count Mouravieff, of January 11, 1899, was a proposal to restrict the use in military warfare

⁹ Wharton, *Criminal Law*, 10th ed., §§274, 275.

¹⁰ Meili, *ubi cit.* 43 n. 8.

of the formidable explosives already existing, and to prohibit the throwing of projectiles or explosives of any kind from balloons or by similar means. The proposal so far as it related to aërial craft was not called forth by any actual experience in modern warfare. Balloons were used by the French as early as the battle of Fleurus in 1794, by the Russians in 1812, by our Federal troops in Virginia, by the French at the siege of Paris, and by the British in the Boer war. Their employment was limited, however, to reconnoitering and to escape from siege. The proposition therefore was apparently an effort to anticipate the future progress of aërial science.

Mouravieff's proposal was referred to a committee which in turn submitted it to its military sub-committee. This sub-committee first voted a perpetual prohibition of the the use of aircraft for throwing projectiles or explosives, which, on motion of the American delegate, Captain Crozier, was limited, in full committee, to cover a period of five years. In this form, it was passed by the Conference and accepted by the Powers.

The action was for humanitarian reasons alone and was founded on the opinion that in the condition of the art as it then existed, persons or property injured by this means, might be entirely disconnected from the conflict, and its use, therefore, of no practical advantage to the belligerent. The period of five years was intended to allow complete liberty of action under such changed circumstances as might be produced by the progress of invention.¹¹

The prohibition expired by limitation on July 28th, 1904, and the subject was therefore again brought up for consideration by the Second Hugue Conference under a suggestion made by the Belgian delegation to renew the prohibition in exactly the same terms.¹² In sub-committee two amendments were made, to be applicable in the event of a failure of the main proposal, one by Russia, the other by Italy. Russia proposed to limit forever attacks by these means upon undefended places. Italy proposed to add to the Russian proposition that no projectiles or explosives should be launched from balloons not dirigible and manned by a military force, and furthermore that the same restrictions that rested upon land and naval warfare should apply to aërial warfare "wherever compatible with this new method of combat."¹³

¹¹ Holls, *The Peace Conference at the Hague*, p. 95.

¹² *Deuxième Conférence int. de la Paix. Actes et Documents*, I, p. 104.

¹³ *Id.* p. 105.

The declaration as finally passed was in the same terms as that of the First Conference except that, at the suggestion of Great Britain, the renewal extends to the close of the Third Peace Conference. The declaration has been ratified among others by Great Britain, Austria and the United States, but though the period for ratification expired June 30, 1908, seventeen nations have failed to give assent, among them, France, Germany, Italy, Japan, Mexico and Russia. On the principle that since the period of conventional regulation of the usages of war, everything may be done which is not expressly forbidden by treaty or customary practice, and as there is no precedent whatever governing the use of aircraft in advancing the cause of a belligerent, it would seem that in the absence of such a prohibition, it would constitute a legitimate operation of war. The launching of projectiles from balloons has been placed in the same class of undertakings as the subjection of coast cities to ransom at the demand of a powerful fleet. Neither has been seriously considered by a responsible belligerent, yet both constitute a sufficiently serious menace to humanity to warrant consideration by international conference.¹⁴

An objection which has been raised to the prohibition as framed is the fact that there is no reciprocal prohibition against firing upon aircraft. This would make them open to attack, yet deprived of their proper defense.¹⁵ The real opposition seems to lie in the technical position of the respective Powers in regard to their present land and naval forces and the advancement which each has made in aerial art. A great naval power like Great Britain would naturally be interested in the prohibition, by reason both of the menace to her military isolation and because the strongest naval vessel might not be proof against destructive agents thrown from above. It may yet be that a supposed advantage by reason of superior naval strength may be much reduced if not entirely eliminated by compensating advantages in aerial strength. That Germany has thus far abstained from ratifying the declaration might seem to be a result of her progress in the use of dirigible aircraft and the great expenditures of money being made for this account. Russia's change of attitude may be accounted for in a similar manner by the loss of her navy since the First Hague Conference.

¹⁴ George B. Davis, in Amer. Jour. Int. Law, vol. 2, p. 528.

¹⁵ H. W. L. Moederbeck, *Die Luftschiffart*, p. 103; George O. Squier, Major, U.S. Signal Corps, *The Present Status of Military Aeronautics*, §201.

The proposal contained in the amendment advanced by the Russian delegation to render unfortified places immune from attack by aircraft was given effect in a much broader form than was then expected. The immunity of undefended places was discussed under the general regulation of land warfare and an absolute prohibition against the bombardment of undefended towns, villages and dwellings "whatever be the means employed" was agreed upon and is now a part of the convention on the laws and customs of war (Art. 25). This does not refer to bombardment from the sea, but there can be no doubt of its application to aircraft. As an American authority has said, "When exposed to such an attack, no place can be said to be 'defended.'"¹⁶ It is strange that though the original declaration has failed of endorsement by many states, the amendment has been given broad conventional effect through the action of a different committee.

The treatment to be accorded to the crew of captured aircraft in time of war has also constituted a serious problem in international law. During the war of 1870, a strong inclination was shown on the part of Germany to treat them as spies. Sixty-four balloons were launched during the siege of Paris, and it will be remembered that Gambetta made his escape to the provinces in this way. Bismarck favored extreme measures, and in fact all balloonists who passed over the German lines were severely dealt with when captured. This attitude has been much criticized by writers upon international law as "neither secrecy, nor disguise, nor pretense" is possible for those who man aircraft.¹⁷

The dispute has now been definitely settled through Art. 29 of the Hague convention which provides that "individuals sent in balloons for the purpose of transmitting dispatches and the general keeping up of communications between the different parts of an army or territory" shall not be treated as spies, and the French official manual for the use of military officers specifically affirms their right to be treated as prisoners of war.¹⁸

It has no doubt been assumed that the obligation of a neutral state extends to the airspace over its territory as well as to its land surface and territorial waters. But the extent of that obligation has

¹⁶ George B. Davis, *ubi cit.*

¹⁷ Hall, 5th ed. p. 540.

¹⁸ *Manuel a l'usage, etc., p. 40.*

never been defined. An absolute duty to exclude the passage of belligerent craft through its airspace would indeed be onerous. Again, with the increasing capacity of air craft to carry articles of greater or less weight, a law of contraband applicable to aircraft may in time be developed. I simply mention these questions in passing, however, as they are not yet of sufficient practical importance for useful discussion at this time.

CONCLUSION

The present period is manifestly an introductory one in the development of a new medium of inter-communication and traffic. It is doubtful that the air will ever be as important commercially as the sea, yet science is the cause of many surprises. But even in its present development, the nations are now united by a closer bond, for the air is a medium in respect of which each nation, no matter how small in area, or howsoever situated, is equally favored in harbor and coastline. Indeed, it has been denominated "the universal highway."

On the other hand, while the advent of efficient aircraft will extend the plane of warfare to a third element, the ultimate result will tend to make for the maintenance of peace. Small parties may be able to pass over protective armies on expeditions aimed at the seat of government itself, where the body of particular individuals most responsible for the war reside. This fact will tend for the first time to subject responsible individuals to immediate and personal danger after the declaration of war, which heretofore has not been the case, and thus the development of aerial navigation will make for peace.¹⁹ Its advent, therefore, will be beneficial from both points of view. In peace, its development will depend upon sacrifices of the lesser for the greater good. In war, its use should be restricted so as to extend to it a humanitarian control equal to that exercised over the methods of warfare now employed.

¹⁹ Squier, *ubi cit.*, §215.

THE NORTH AFRICAN QUESTION AND ITS RELATION TO EUROPEAN POLITICS

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THE LAW OF NATURE IN EARLY AMERICAN DIPLOMACY

BY PROF. JESSE S. REEVES

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By permission this address will be published in full in the *American Journal of International Law*. The following is an abstract:

In the paper entitled the Law of Nature and Early American Diplomacy, an attempt was made to estimate the influence which the Continental text-writers had upon American conceptions of the Law of Nations. These text-writers, from Grotius to Vattel, were widely read and studied by the statesmen of the Revolutionary era. They were used in preparation for the bar, and frequent references to them are to be found not only by those who had the direction of American diplomacy from and after 1776 but also by the courts. International law found entrance into American legal thought through the law of prize. As early as 1776 a Massachusetts court, in the case of *Grover v. the Brig William*, held that by the Law of Nations, Boston was in March, 1776, a place besieged. Courts in the various states at the outset assumed full admiralty jurisdiction, refusing to make the English distinction between courts of instance and of prize. The decisions of the courts in these early prize-cases followed neither British precedent nor the continental text-writers, but usually what seemed to be the best European practice. Although there appears to be little in these decisions drawn directly from the Law of Nature, it is otherwise in the writings of the early diplomats. There the influence of the text-writers is more apparent. The treaties with France in 1778, as the first American attempts at the formulation of international rights and duties, show the influence of the writers as well as of continental practice. As the United

States proceeded upon its career as a nation, American diplomats depended more and more upon the ideas of International Law as developed by the Federal Courts. To single out certain principles as drawn from the Law of Nature is difficult owing to the elusive nature of the conceptions of that law. It is safe to say, however, that the Law of Nature furnished the founders of the Nation with an ideal as to international rights and duties somewhat comparable with those ideals of individual liberty derived from the doctrines of Natural Rights.

THE NEW YORK CITY PUBLIC SERVICE COMMISSION

BY TRAVIS H. WHITNEY

Secretary of the Commission

By Chapter 429 of the Laws of 1907 there were created in the State of New York two Public Service Commissions, displacing the Railroad Commission, Gas Commission, State Inspector of Gas Meters and, in New York City, the Rapid Transit Commission. The Commission for the First District was given jurisdiction in the four counties comprising the city of New York and the Second District Commission jurisdiction in the remainder of the state. The latter Commission has the problems arising from transportation on the great steam roads and from the many gas, electric and street car and interurban companies in the cities and towns of the State.

The Commission for the First District because of its jurisdiction in New York City is concerned almost exclusively with municipal questions, though actually exercising state functions except as to rapid transit. It has to deal with comparatively few companies, but because their business touches millions of people confined to a comparatively small area, the problems that arise have elements involving personal and municipal relations to a greater degree than is true with a commission with jurisdiction over a wide territory and scattered population.

The surface, elevated and subway companies in New York City carry annually over 1,300,000,000 passengers, which is over 66 per cent more than the total number of passengers carried on the steam railroads of the entire country. They have a capitalization of over \$533,000,000 and derive annually from their passengers over \$62,000,000 in fares. Until the recent receiverships the operating companies were concentrated into six groups.

The gas and electric companies have a capitalization of over \$386,000,000. The amount of gas sold in the city is over 32,000,000,000 cubic feet, which is more than 20 per cent of the entire production in the United States.

Before taking up the important matters dealt with by the Commis-

sion it will help to a clearer understanding to group the principal provisions of the law.

Duties Imposed on Companies. The following affirmative duties are imposed upon common carriers:

1. They must furnish such service and facilities as shall be safe and adequate and in all respects just and reasonable.
2. All charges made or demanded for service rendered shall be just and reasonable.
3. They must file with the Commissions and keep open for public inspection, schedules showing the rates of fares and charges for the transportation of passengers and property.
4. They must provide switch and sidetrack connections.
5. There must be no special rate, rebates or unjust discrimination.
6. There must be no free ticket, free pass or free transportation of passengers or property, except to railway officers and certain other specified individuals.
7. They must have sufficient and suitable cars for the transportation of freight in carload lots.
8. Railroads and street railroads must have sufficient cars and motive power to meet all requirements for the transportation of passengers and property that may reasonably be anticipated.

Powers Granted to the Commission. In order that the Commission may see that the public is adequately treated, they are given power:

1. To examine into the general condition, capitalization, franchises and management of all common carriers.
2. To examine all books, contracts, records, documents and papers and compel their production.
3. To establish a uniform system of accounts and prescribe the manner in which they shall be kept.
4. To prescribe the form of annual reports.
5. To require reports as to accidents and to investigate the same.
6. To order repairs, improvements and changes in tracks, switches, terminals, motive power or any other property or device, in order to secure adequate service.
7. To order increases in the number of trains, cars or motive power, or changes in the time of starting trains or cars.
8. To investigate as to any act done or omitted to be done in violation of law or of any order of the Commission.
9. To fix maximum rates that may be charged.

10. To entertain complaints by aggrieved persons and after hearings thereon, to order the carriers to make such changes as will remove the cause of complaint.

Similar powers are given to the Commission with respect to gas and electric companies, with the additional power to test gas and electric meters.

Subjects upon which Commission's Approval is Essential. In order that the franchises and capitalization of public service corporations may be properly controlled, the Act provides for the approval of the proper Commission, for example:

1. A certificate from the Commission is required before a railroad or street railroad or gas or electric company may begin new construction or the exercise of a franchise not theretofore exercised.

2. A franchise to own or operate a railroad or street railroad, or a gas or electric company, cannot be transferred or assigned without the approval of the Commission, nor is a contract relating thereto valid without the approval of the Commission.

3. Stocks, bonds, notes or other evidences of indebtedness of common carriers, or of gas and electric companies for a longer period than twelve months may not be issued without the approval of the proper Commission.

4. A railroad or street railroad company may not acquire any of the stock of a similar corporation without the consent of the Commission, nor may any stock corporation hold more than ten per cent of any public service corporation without the consent of the Commission.

5. A merger or consolidation of existing companies can be made only with the approval of the Commission, and even then there must be no capitalization of the merger itself.

Penalties for the Violation of Orders. The conclusions of the Commissions as to matters affecting companies are expressed in orders to the companies. Failure to comply with an order or with the provisions of the law subjects the companies to drastic penalties. Each day's violation constitutes a separate offense, and if the violator be a common carrier, the penalty is \$5,000; if other than a common carrier, \$1,000. Every individual who aids or abets any violation of an order of the Commission, or who fails to obey or aids or abets any corporation in its failure to obey, is guilty of a misdemeanor. In addition, the Commission may commence in the courts an action to secure a mandamus or an injunction and as to

any actions to which a Commission is a party, precedence is given over all cases on the calendars, except election cases.

Rapid Transit Jurisdiction of the First District Commission. In addition to the above supervisory powers there were transferred to the Commission for the First District the important powers and duties of the former Rapid Transit Commission under the Rapid Transit Act. These are

1. To grant certain classes of franchises, such as those now being exercised by the Pennsylvania Railroad and the McAdoo Companies, and
2. Subject to the approval of the Board of Estimate and Apportionment of the city, to lay out municipal rapid transit routes, prepare plans, obtain contractors, supervise construction and secure operators for such routes or under certain contingencies to operate them directly.

It will thus be seen that this Commission has the legal power to secure additional transit facilities for a given section of the city in two ways. It may require existing private companies to increase their facilities or it may provide a city owned rapid transit line operated either by a private company or by the Commission as agent of the city. There have been grave difficulties confronting the exercise of both of these methods, coupled with the delays incident to the organization of the Commission. The Commissioners when they entered office were under the necessity of organizing a competent staff and of laying down a course of procedure to be followed in a field where there were no precedents. The Commission now, after a year and a half, has a staff of employees numbering over 560 and an annual budget of about one million dollars. About sixty per cent of this goes to the maintenance of a large engineering department engaged in the preparation of plans and supervision of construction of subways. For its supervisory work the Commission has a Bureau of Transportation containing about 75 electrical and mechanical engineers and inspectors, who make inspections of service and equipment. Besides a large general office staff, there are also bureaus of gas meter testing, of statistics and accounts and of franchises. To handle the legal matters, there is a Counsel with a considerable department under him. The mere selection and training of such a large organization was in itself a tremendous task, yet so deplorable was the transportation service in portions of the city that the public could brook no delay after the Commissioners themselves

were once in office. It may be worth while to go over the situation as to some of the surface lines in order that there may be some appreciation of the task that first confronted the Commission in its efforts to see that the proper public service was rendered by companies to which the state had given the right and duty to render such service.

Conditions of Metropolitan System. The condition of the surface roads in the Metropolitan system in Manhattan and the Bronx before the Commission came into office could hardly have been worse. The controlling interests had apparently given their best attention to the securing of profits from the continued issuance and manipulation of new securities rather than from the transportation of passengers. Little attention was given to efficient service or the upkeep of the properties. The general investigation by the Commission, begun during its first month, with the Hon. William M. Ivins as counsel, disclosed that in large part the deplorable condition of this system was due to leases under which excessive rentals were paid, to piling up of bonded indebtedness with consequent increase of fixed charges, to improper expenditures for political purposes and for "acceleration of public opinion," as the chief agent of the company so well described it, and to the juggling of accounts by which unearned dividends were paid while the roads and equipment were allowed to deteriorate.

The consolidation of the system began in 1890 and continued for nearly fifteen years until the entire surface system and the elevated and subway were brought under one control. The leasing and purchasing of stock control went on with no state supervision. The increases in stocks and bonds were submitted to a state board which did little more than stamp its approval on the applications.

The accompanying table sets forth the various leases by which the various lines were brought into the Metropolitan Street Railway System.

It will be observed that with one exception the rental to be paid exceeded the dividend that the lessor had been able to earn when operating independently. On the top of this burden the Metropolitan was leased to the New York City Railway Company at a rental of 7 per cent on \$52,000,000.

Besides paying the above rentals, the lessee company paid the interest on all the bonded indebtedness of all these street railroads, so that by 1907, the total fixed charges payable by the New York City Railway Company on the roads in the Metropolitan Street Rail-

Company.	Date.	Amount of Stock of Lessor Com- pany.	Rentals Exclusive of Interest.	Per cent of Rental on Stock of Lessor Company.	Average dividends paid for 15 preced- ing years.
Bleecker Street and Fulton Ferry.....	1876	\$900,000	\$13,500	1.5	
Christopher and 10th Street.....	1890	650,000	52,000	8.	1.6
Broadway and Seventh Avenue.....	1890	2,100,000	210,000	10.	5.2
Sixth Avenue.....	1892	2,000,000	145,000	7.2	8.5
Ninth Avenue.....	1892	800,000	64,000	8.	.7
Central Park, North and East River.....	1892	1,800,000	162,000	9.	4.6
42d Street and Grand Street Ferry.....	1893	748,000	134,840	18.	16.
23d Street Railway Company.....	1893	600,000	108,000	18.	10.
Eighth Avenue.....	1895	1,000,000	215,000	21.5	10.6
New York and Harlem.....	1896		400,000		
Second Avenue Railroad Company.....	1898	1,862,000	167,580	9.	3.5
Third Avenue Railroad Company.....	1900	1,600,000	960,000	6.	5.6
Central Crosstown.....	1904	600,000	90,000	15.	10.

way System amounted to \$11,000,000. After the making of these leases, those in control of this system increased interest charges by increasing the funded debt. The funded debt of all the leased roads aside from the Metropolitan Street Railway was increased after the making of the leases from \$11,000,000 to \$62,000,000. The bonded debt of the Metropolitan Street Railway Company was increased from \$9,000,000 in 1897 to \$44,000,000 in 1907, although this Company had but 28 miles of electric track, so that the bonded debt per mile of electric track was \$1,500,000 nearly twice the cost per mile of track of constructing and equipping the present subway.

A little over a year ago this system went into the hands of Federal receivers, and yet in the face of the facts that I have barely outlined above, there are those who say that the creation of the Commission caused the break-up of the system. The receivers have been endeavoring to improve the condition of the properties in their charge, but before long they will need to surrender their control and allow the properties to go back to the old companies or to newly organized companies. The Commission now has under way an appraisal of all the properties, tangible and intangible, of the surface lines of Manhattan and the Bronx that it may possess as full infor-

mation as possible when the capitalization of the reorganized companies comes before it for approval.

The recital of the above facts is sufficient to indicate the difficulties besetting the Commission in its attempts to secure the better service demanded immediately by the public in the leading borough of the city. Criticism has been made that the Commission has not secured sufficient results particularly during the current year, yet the Commission has been engaged upon what may be called important sub-surface and foundation work not apparent to the public, or to the newspapers, but upon which can be based effective future supervision of public services.

Forms of Accounts and of Reports. In the long run perhaps the most efficient power granted to the Commission is that of prescribing the systems of accounts to be kept by the various classes of public service corporations as well as the forms of periodical reports, with the power to examine at any time the books, vouchers and other records of the companies. It is of great importance that there shall be uniformity in accounts between all corporations of the same class and that accounts shall show clearly and accurately the specific sources of income and the purpose of every expenditure.

The Commission when it took up this duty adopted for the two steam roads within its district the forms prescribed by the Interstate Commerce Commission. As to electric street railroads and gas and electric companies it found that little work had been done other than by certain technical associations whose systems were not compulsory nor had they been generally accepted because of considerable differences of opinion within the associations themselves.

After conferences with the Interstate Commerce Commission, with other state commissions and with the associations representing the various classes of corporations, forms of accounts have been prescribed for gas and electric companies and for electric railroads. The general principles underlying these forms are set forth very fully in the able report of Commissioner Maltbie presented at the time of their adoption. Under these systems there will be prevented the charging of items to wrong accounts. Proper entries must be made for repairs, renewals and for deterioration to the end that on the one hand there may be a sufficient amount for proper dividends and on the other hand that sufficient provisions may be made for the maintenances to a proper degree of efficiency of the plant of the companies.

The establishment of such forms of accounts, together with the ability to see that they are followed, will be of the utmost value to the traveling and to the investing public. No longer will patrons be deprived of proper service and stockholders of their proper return by improper expenditures and entries.

Approval of Capital Issues, of Stock Control and of Leases. A further efficient power is the control of the Commission over future issues of stocks and bonds, over the holdings of stock by other corporations and over leases. Under the Act capital stock or bonds may be issued with the approval of the Commission for the following four purposes only:

Acquisition of property,

Construction, completion, extension or improvement of facilities,

Improvement or maintenance of service,

Discharge or lawful refund of obligations

and there can be no capitalization of a franchise other than of the actual amount paid to public authorities, nor can there be any capitalization of a merger above the combined capitalization of the companies merged.

The criticism has been made that the provisions of the law are so drastic that new capital will not invest in enterprises under it, yet applications for approval of securities for more than \$125,000,000 have been made to the Commission and a little over \$40,000,000 allowed. The refusal of one application is illustrative. An electric company dormant for many years applied for approval of large issues of stock and bonds with the declared intention of entering into competition in the electric field. The Commission refused to grant its approval having reached the conclusion that as to a public service which is in a measure a natural monopoly and where an existing company has the capacity and is rendering efficient service with power in the Commission to compel a maintenance and improvement of the standard it is economically unsound to allow a duplication of plant with the possibility of increased burden to the community through possible future common control. This decision has met with very general approval. As to two large applications granted the Commission first satisfied itself that there was sufficient property to secure the bonds approved and then carefully prescribed limits as to the prices at which they were to be sold with the alternative that the bonds must be put up to public bidding under the supervision of the Commission.

Stocks and bonds of public service corporations may not be acquired by other public service corporations without the approval of the Commission nor may any other stock corporation hold, save for collateral, more than 10 per cent of the stock of public service corporations. There has been no application to the Commission for approval to the acquisition of stock and, as the carnival of stock acquisition went on before the Commission was created, this provision of the Act seems to be a locking of the stable door after the *first horse has been stolen.*

The approval of leases and agreements will make control possible of the terms of future leases. The present receiverships have caused the breaking of a number of leases upon which excessive rentals have been paid and it is entirely possible that a means may be found whereby some of the remaining rentals may be substantially reduced. Apparently most of the financial difficulties of the city's lines, with the ensuing starvation of service and equipment, have arisen from the burdens of rentals.

Equipment and Appliances. Under its power to require changes in equipment and appliances, the Commission ordered the complete and thorough overhauling of all of the surface cars operated in the Boroughs of Manhattan and the Bronx, upon which over a million dollars has been expended. As a result the noise and strain incident to the running of rattling cars with flat wheels has been enormously decreased with increased car efficiency.

The cars of the Metropolitan proper, which were in such wretched condition that over 20 per cent were unable to complete a day's service without being run in for temporary repairs, are being overhauled under specifications prescribed by the Commission, so that now the daily run-ins for repairs has dropped to 5 per cent. The Receiver of the Third Avenue system has testified that he expected to find a going concern but found it nearly gone. He has, however, bought additional equipment, repaired and relaid tracks and is furnishing such service as to have reduced very materially the complaints against this road. The Commission has ordered the Interborough Company to equip two of its subway trains with side doors, to the end that if successful the entire subway system may be equipped with side doors. Other material subway changes have been recommended to the Commission by its engineers. One company operating over the Brooklyn Bridge had, at the time of the Commission's first investigation, five times its proportionate number of "break-

downs" on the bridge. As a result of orders of the Commission, these breakdowns have been reduced to one-fifth of their former number.

Accidents. The first order of the Commission required companies to give immediate notice by telephone of any accident and a written report within three days. To receive the telephonic notices, the office is kept open from 8 a.m. to 11 p.m. every day in the year and inspectors and a photographer are held in readiness to investigate the more serious accidents. The total number of accidents reported reaches nearly 50,000 in a year and the number killed nearly 600. The amounts paid out by the companies as damages and legal expenses absorb a considerable part of the income of the companies. In the case of the New York City Railway Company, operating all the surface lines of Manhattan and most of those of the Bronx, these accident expenses in 1907 were 9 per cent of the operating expenses and more than the amount paid for wages of conductors.

To reduce the number of accidents the Commission authorized a sub-committee of its bureau heads to make a special study of safety devices and accident prevention methods. This Committee during the months of October and November conducted at Schenectady, N. Y., and Pittsburg, Penna., exhaustive tests open to all fender and wheelguard manufacturers in this country and abroad. There were in attendance members of other state and Canadian commissions and many prominent railroad officials. The report of the tests is now before the Commission and will shortly be made public. It will be followed by orders of the Commission requiring the installation of approved fenders and wheelguards. The Committee will then take up thoroughly the matter of brakes. Already one company has been directed to give consideration to a change of the brakes used by it.

Increase in Service. The Commission may require by order increases in service under the provisions of the act that companies shall furnish adequate service and shall have sufficient cars and motive power to meet any requirements of transportation that may be reasonably anticipated. The problem presented, however, of defining what will be regarded as adequate service is shown by the fact that in the year 1907, disregarding the number of transfers, there were carried on the roads of the New York City Railway Company 66,000,000 more fare passengers than in the year 1906. It is not to be wondered at, that with the increase in the number of passengers incident to the growth of a great city, any increase in car

service ordered by the Commission is not readily apparent to the traveling public; yet of the time of the Commissioners, a relatively greater amount is taken up with consideration of increases in service than with any of their other important duties.

The problem of what shall be deemed adequate service on street car lines in a great city is purely relative. It differs from that presented in the case of lighting companies, for, with gas and electric companies, there is a well understood unit of service and a unit price and the consumer gets the units he pays for. Occasionally he thinks that the meter is not registering accurately and has it tested by the Commission. Outside of this and two or three other minor matters of complaint there is no problem of adequate or inadequate service. There are important questions of price and forms of contracts, but these are not elements of adequacy. In transportation there is no limit of service other than that a passenger upon payment of a fare is entitled to a ride. What does this mean where 20 per cent of the total travel takes place in a single hour? There are limits to the number of tracks on a leading street, to the number of cars that can run over the tracks in an hour and to the number of cars that the resources of a company can provide.

The Commission has endeavored to increase the efficiency of service by requiring improvements in equipment. It has studied street congestion and attempted to have routes so changed as to avoid the limiting points of capacity. It has also insisted that the so-called rush hour period shall be cut down. There is a period in New York City during which it is physically impossible to furnish seats for all, but the companies have fallen into the practice of calling the period during which they have not furnished seats as a rush hour period rather than the much shorter period when the rush of passengers who desire speed rather than seats overwhelms the capacity of the lines. Companies recognize that their profits are in the standees and it is a constant struggle to prevent the companies from causing unnecessary inconvenience to their passengers during non-rush hours. The art of cutting down trains and cars during non-rush hours has been described by one company official as "protecting revenue" on the theory that every train or car shall be run at a profit. This theory is unsound yet where shall the line be drawn? What proportion of its cars or trains can the Commission require a company to run regardless of profit in order that passengers shall not wait an undue length of time?

Rapid Transit. I have stated that besides its supervisory powers the Commission has certain powers and duties as to rapid transit. It has supervised the completion of the Brooklyn tunnel and subway and certain additions to the original subway, and now has under construction, through contractors, a \$10,000,000 loop subway to connect the Manhattan ends of the three East River bridges. The Commission has realized that these will not afford comprehensive and adequate service to the city and has adopted additional routes, one through Brooklyn and another the length of Manhattan and the Bronx. Their construction, however, is hardly a possibility until there is both a change in the attitude of the city administration and an expansion of the city's financial capacity either by economies as to other municipal expenditures or by a constitutional amendment allowing the exemption from the city debt limit of revenue producing enterprises.

To one interested in the administration of a law, that as to public services managed and operated by private companies gives power to prescribe forms of accounts and to supervise expenditures and the advisability of the issuance of securities, it is difficult not to give some attention to the affairs of the city. Certain improved forms of accounts and methods of entry are now being adopted following the volunteer suggestions of the Bureau of Municipal Research. The character of the enterprises into which the city has been and is putting its money is, however, of even more importance than the correct bookkeeping of the accounts.

In one class, in which should be included the docks and the existing water system, is the subway. Under the Rapid Transit Act a subway must be leased on such a rental as will provide at least interest on the bonds issued for construction and one per cent a year for a sinking fund for the retirement of the bonds. The city thus secures in less than fifty years an extinction of the bonds and has the subway as a clear asset.

In another class may be included the Staten Island ferry operated by the city at a deficit said to be in excess of the total amount of taxes collected in Staten Island. A deficit exists also in the operation of the 39th Street ferry and now there is a plan on foot for the city to take over the operation of other ferries across the East River. These ferries have been made unprofitable for the private companies operating them largely by the construction of bridges across the East River and as to its bridges the city appears to be a poor investor.

The Brooklyn Bridge which has up to this time cost about \$25,000-000 and now said to be needing reconstruction brings no net income to the city. The railroad companies occupy it almost exclusively yet the rentals which they pay are deducted from their franchise tax. The same is true as to the Williamsburg Bridge. The Blackwell's Island Bridge is said to have strength only for trolley cars, though built to include elevated lines. The Manhattan bridge is nearing completion and will probably carry important transit lines. Yet from none of these bridges will any income be derived under the present policy of the city as to bridges. They have cost enough to have constructed several subways connecting the boroughs, which if built under the Rapid Transit Act would have been, from a municipal financial point of view, self-sustaining.

As a part of the Williamsburg Bridge there has been constructed an underground terminal sufficient in size for trolley cars and elevated trains and costing \$1,000,000. This terminal is being used by the various Brooklyn lines under an oral agreement from which no rent is derived by the city.

No difficulty appears to prevent appropriations to any amount for these unprofitable enterprises, but as to rapid transit routes objections seemingly insurmountable to the present city administration are immediately raised. To many citizens of the city, however, the present inadequate transportation facilities seem a sufficient reason for economy as to expenditures for enterprises that are comparative luxuries.

Gas and Electric Companies. With gas and electric companies the problems are largely those arising from the instruments for measuring the service furnished and from the conditions that the companies have sought to impose in their so-called contracts. The question of the price of gas has been under litigation in the 80-cent gas case which is now awaiting decision in the Supreme Court of the United States. No gas meters may be placed in use until tested by the Commission and the Commission has recently required that all meters that have been in use for more than seven years shall be removed and retested. Of the electric meters in use in the city, the Commission has made thorough tests of each type in use and will probably prohibit the use of such types as appear not to be reliable.

To contract conditions sought to be imposed by electric companies, the Commission has given careful attention and after a protracted inquiry has arrived at an order that requires the companies to file

thirty days in advance of their effectiveness all forms of contracts. This, with an order prohibiting discrimination among customers, will largely do away with complaints that the electric companies give special rates to favored or large customers. One of the conditions imposed by the companies when the electric inquiry was begun provided that a consumer could take electricity from no other source even including in the prohibition his own private lighting plant. This condition was gradually driving out of use the private plants in the large buildings, for the owners could not run the risk of their own plants breaking down and be without ability to get electricity from the company. The Commission entered into an understanding with the companies whereby this "break-down" and "auxiliary" service was to be given to owners of private plants under conditions that could be watched and after a year's test could be prescribed.

Conclusions. I have endeavored to sketch in outline the general provisions of the Public Service Commissions Law and certain of the important efforts of the Commission for the First District. The Commission has now been in office a sufficient length of time to have laid the foundations for the kind of supervision that is needed. The criticism has been made, however, that under this law there is practical operation of the transportation lines by the Commission, that the Commissioners have been placed in the shoes of the Directors of the companies and that such State regulation is in effect State prohibition of new enterprise and State operation of existing railroads. To give this criticism its proper weight involves the assumption that prior to the creation of the Commission there was "practical operation," that directors directed and that there was room for further extensive new railroad enterprises. These assumptions as to the situations in New York City before the Commission came into office are unnecessary. From the facts revealed in the investigations that have been made, from the admission of the present Federal Receivers and from careful observations it is apparent that in failure to keep up equipment, in lack of discipline of employees, in diversion of funds to improper purposes and in failure to collect fares, the old Metropolitan-New York City Railway System as run by its directors, if they directed, exemplified the evils that have in times past been described as evils peculiar to municipal operation.

There has never been any legal doubt under the common law that persons performing a public service were under the duty to serve all

alike, to give adequate service at reasonable rates and to have proper and safe equipment. Neither is there any doubt that the state which creates corporations has the right to regulate the capitalization and the accounts of such corporations. Assuming these principles there is still more work for directors than they have heretofore done in the management of their properties. There is no shifting of the principles of responsibility for a State commission to define what it will regard from the point of view of the people to be served as adequate service, to fix standards of safety and efficiency in equipment, and to direct that companies shall file and publish the rates that they will charge. Furthermore questions of adequacy, proper rates and equipment cannot be fairly dealt with unless uniform and scientific principles are followed in the keeping of accounts and in the issuance of additional securities. The Commission has been chiefly concerned up to the present time in establishing these standards and principles. Its chief duty hereafter will be to see that they are observed, leaving to the directors and managers of the roads the carrying out of their duties as officials of public service corporations.

THE BUREAU OF MUNICIPAL RESEARCH

BY HENRY BRUÈRE

Director of the Bureau

The Bureau of Municipal Research is an exponent of the inductive method applied to political science. In its point of view and method it is opposed to a static conception of political principles and ideals, and it aims through its activity at a new interpretation, on the basis of experience and contemporary social conditions, of governmental ideals. It sees in the science of government an opportunity of continuous interest for democracy, and urges a recognition of the existence of a science of government outside the colleges and universities. The Bureau of Municipal Research is not concerned with traditional concepts of governmental relations, but it is continuously and actively interested in present community needs to which government is, or may be related, and the performances of government with respect to the satisfaction of those needs. It seeks to awaken popular intelligence, not about political principles, but with respect to current acts and omissions of governmental agencies. It is fighting for the realization of the philosophical concept of a robust, real democracy and an equality of opportunity, by securing an efficient discharge of the community business.

The method of the Bureau is:

1. To study governmental problems through scientific analysis of community needs, governmental functions, legislative and administrative procedure and transactions.
2. By continuous iteration, publication, reiteration and republication of facts concerning governmental problems, methods, official acts, results and omissions, to focus public attention on current happenings and to educate continuous interest in the common business of the community.
3. Correction of defects of government, stimulation of official activity, and checking of abuses by publicity of facts and constructive improvement of administrative methods in cooperation with public officials.

In its intensive studies of governmental conditions in New York City, the Bureau has found that *permanent* improvement in the administration of a city can be secured only through an improvement in methods which government employs in the performance of its functions. It has shown conclusively that methods prevailing in the conduct of the city's business, continuing through reform as well as Tammany administrations, did not stop breeding neglect, waste and corruption, merely because of a change in the educational acquirements, cut of clothes or moral purposes of a head of a department. In other words, it has demonstrated the fallacy of an assumption, still cherished by the so-called respectable elements in cities, that the bottom cause of bad government in America is the election and appointment of bad officials.

None of the constructive improvements in municipal administration undertaken the past three years under Mayor McClellan and Comptroller Metz was impossible of at least a beginning during the administrations of so-called reform mayors and comptrollers. The very fundamental steps necessary to insuring an efficient administration were ignored during the periods of reform. The fact that constructive reorganization of municipal business methods has been begun during Mayor McClellan's administration and was not begun by Mayor Low, sets up no test of the comparative personal efficiency of these officials, but it does show, and we think conclusively, that indispensable to a permanent improvement in municipal affairs is continuous permanent effort, supported by continuous citizen interest, independent of the accidents of elections and which no change of administrations may subvert.

The instrument through which the work of the Bureau of Municipal Research is done is a staff of forty members,—trained social workers, expert accountants and investigators, the cost of whose service will exceed \$90,000 for this year. Begun in New York City in 1906 as a local citizens' movement, the Bureau has developed into national proportions. Similar activity under the direction of the New York Bureau has been initiated in Philadelphia and Memphis, and plans are now being made for inaugurating intensive study of municipal problems in Cincinnati, Atlanta and Milwaukee. The activities of the Bureau are entirely non-partisan in purpose. It represents no special interest, but seeks to represent every member of the community whose interest is as broad as the community itself.

The first problem of the Bureau of Municipal Research at its inception was to secure the regular registration and publication of essential facts respecting the conduct of departmental business, as a basis for popular judgment of the efficiency of current administration. From time to time, in the past, exposés have been made of certain aspects of departmental waste and corruption, but only when conditions became so acute as to focus public attention upon manifestations of official incompetence. The remedy usually proposed, and sometimes followed, was the removal of an official supposedly responsible, a course followed by a relapse into indifference, after the appointment of a presumably respectable successor, until a new crisis developed.

Such has been New York City's experience, for example, in the administration of its department of street cleaning. A tradition exists in New York that some time, now years, ago, during a reform administration, the streets of the city were kept immaculate, and the department's business was conducted irreproachably, under the leadership of a commissioner whose name became a synonym of efficiency. Since the days of this exalted administrator, the department has successively passed into the hands of "bad" and "good" officials. During the Van Wyck administration, when a district leader was elevated to the position of street cleaning commissioner, conditions became so bad that in 1902 public discontent resulted in the appointment of a commissioner whose energy and ability had been demonstrated in the Spanish war.

As a mark of reformation from earlier Tammany methods, Mayor McClellan on taking office in 1904 continued this reform commissioner. In 1906 the Bureau, in seeking to learn the cost of cleaning New York's streets and other elementary facts regarding the administration of the street cleaning department, discovered that during the entire term of the reform commissioner, no report had been issued from which these facts could be learned. A brief investigation by the Bureau led to an official investigation which, a few months later, was followed by the retirement of the reform commissioner. Reaction followed, and an executive was appointed whose personal virtues no one proclaimed. The disorganization developed in his administration, led to a demand for the appointment of a new, irreproachable official whose five months' service in ridding the city of its refuse was gratefully acclaimed by press and public. On his withdrawal a highly esteemed engineer was appointed to succeed him. A

week ago this gentleman, whose personal integrity no one has ever questioned, handed in his resignation, giving the familiar reason of "pressing private business."

The facts are that at no time in its history has the business of the department of street cleaning been more incompetently administered than during the incumbency of this esteemed engineer, but the facts are also that the same conditions that compelled incompetency on the part of the latest discredited department head had prevailed in greater or less degree during all these previous administrations, reform and reactionary alike. Investigation in progress has shown that not the commissioner, but subordinates occupying strategic positions, administered the department, who prevented information getting to their chief essential to exercising intelligence with respect to his official business. Appropriations have been exceeded, deficits incurred and improper charges made to the accounts, because the head of the department did not insist upon knowing what his subordinates knew and kept from him. These same subordinates have exercised this power during successive administrations, and it has only been when, in the normal cycle of events, conditions have become acute, that the head of the department has been sacrificed to appease popular wrath.

These facts the mayor now, for the first time, recognizes, and has resolved not only upon the appointment of a new commissioner, but upon a complete change in official personnel, and a thorough reorganization from top to bottom of the methods and habits of the department. The work of reorganization will be conducted by experts in the employ of the mayor's commissioners of accounts and the Bureau of Municipal Research and will be based upon a thorough study of the problems of the street cleaning department, methods employed and existing defects and abuses, against which provision must be made in the future.

The belief, hitherto almost universal, is fast losing ground, that mere change in personnel will effect any permanent improvement in the conduct of public affairs. Indispensable to such improvement is the substitution of effective processes for wasteful methods, of businesslike practice for confusion, plus intelligence which must not only be intelligence available to the administrator, but through published reports available to citizens; for example, to make such intelligence respecting the affairs of the department of street cleaning continuous, it will be necessary first to establish

records which develop facts descriptive of the work of the department, and by means of which its expenditures may be contrasted with results. The Bureau of Municipal Research is first to recognize that no installation of improved records and methods of administration will be automatically effective unless there is joined with such reorganization continuous publicity and a periodic test of the efficiency of the department. A recurring opportunity for the application of this test exists in the making of a municipal budget.

A municipal budget is potentially a solemn determination of the scope and effectiveness of municipal activity during the period to which it applies. In fact, municipal budgets have in the past been a means of legalizing misdirected energy, confusion and waste in the conduct of municipal business.

In 1906 the budget of the city of New York was by more than one hundred millions the largest municipal budget in America, and it ranked second to none in the obscurity of its provisions. In 1909, New York City's budget, while still first in magnitude, is likewise first in clarity and precision of its specifications. If it still continues to provide for unnecessary expenditures, it also makes possible determination where those expenditures are unnecessary. It provides for every specific governmental function a specific appropriation, and for each specific appropriation it determines the number of employees which may be carried on the rolls, and their rates of compensation and the classes of supplies and materials which may be purchased. In 1906 it was impossible to tell the purposes, even along broad lines, of departmental appropriations. Salary and supply accounts were confused, and to a department conducting thirty or fifty specific functions, appropriations under eleven or fifteen general headings were made, bearing no relation to these activities. The reorganization effected during the past three years in the budget methods of the city of New York has laid the foundation for complete reorganization of the business methods of the city, for rigorous enforcement of responsibility of officials, for the measurement of results with expenditures, for the location of waste, and for interesting the public in facts and problems, instead of guesses and promises respecting the conduct of its common business.

The principle upon which New York City's budget has hitherto been voted was to estimate in October of one year the tax-producing capacity of the taxpayers in the calendar year next succeeding, and then to apportion the estimated product amongst the hundred or

so departments receiving support on the basis of last year's appropriations, modified by accidents of personal or political influence of department heads, or statutory requirements. To the borough presidents, for example, as voting members of the appropriating bodies and at the same time heads of administrative departments, annual increases were granted, not upon the basis of need, but in accordance with the political influence and legislative weight of the borough head. The department of health, on the contrary, received admittedly insufficient appropriations on the assumption that its necessities could be provided for through supplementary appropriations payable out of the taxes of the year following. This practice made impossible the formulation of an annual program for health work at the beginning of the year, and resulted in unsystematic and ill-regulated conduct of health activities. The estimate of the department of health, like the estimate of every other department submitted in 1906, requested appropriations for the various activities under its jurisdiction in amounts far in excess of expected allowances, on the theory that it was wise to provide a generous margin to offset an arbitrary horizontal cut. Specious and unconvincing arguments were advanced in favor of increases requested, and the only basis for judgment provided was a statement of the force employed as of the 30th day of June last, which every one assumed to be purposely inflated, and a broad estimate of the expenditures for the year in supply accounts. The budgetary estimate of the department made up a formidable document which together with the other departmental estimates were bound in a large unwieldy volume, published in limited numbers, and made available to the public a day or two prior to action upon them by the board of estimate and apportionment. The head of the department was expected to appear before the board of estimate and apportionment early in October to justify his requests. It may be that his budget the year before amounted to one million or five millions of dollars, and he was asking for next year two millions or eight millions, as the case might be. No member of the board had given more than a casual glance at his estimate, perhaps he had not seen it himself, inasmuch as it was prepared by a clerical subordinate, designated for the task because of his ability to paint the achievements of his superiors in glowing terms, and to evolve ingenious estimates of next year's necessities. With a brief speech by the department head, in which he expressed his conviction that unless the full amount requested by him were granted, the

business of the department would practically come to a stop, and a laudatory or otherwise irrelevant comment by members of the board on the official's activity, the estimate was submitted to expert budget pruners, who had to prepare a tentative allowance for formal adoption. The process they employed was to apportion on a percentage basis, pro rated, in accordance with last year's appropriations, the estimated increase in the tax product. If the department of health received \$1,500,000 in 1906, and there was to be an estimated increase of \$10,000,000 in the tax product, and the health appropriation last year was one per cent of the total budget, the increase to be allowed the health department was fixed at approximately \$100,000.

While this method of budget making was in progress by a committee who had not heard the eloquent address of the department head, taxpayers were invited to appear before the board and to express their views as to what the departments should receive. Few taxpayers had the temerity to appear for cross-examination by the fiscal officers as to their rights to an opinion, because opinions were difficult to acquire and more difficult to substantiate. If the taxpayer assumed that appropriations were to be granted in support of specific activities, he found that last year's budget did not show, for example, how much the health department had received for contagious disease inspection, sanitary inspection, food inspection, or for any other important division of its work; nor was there any means of telling from a departmental estimate, or from any published report, what these activities had cost in any year. To urge an increase for any of these purposes, therefore, would be to accept the assurance of the department head that an increase was necessary, or to act upon the principle that the city's business must always cost more next year than last. Philanthropists and social workers urged on general principles increases for the so-called social departments of education, health, charities, hospitals and tenements. Now and then an aggrieved taxpayer protested against any increase for any purpose whatsoever. "A gabfest" was the official designation of taxpayers' day prior to 1909, because every one was assumed to be talking about affairs concerning which he had no knowledge. A hearing of an hour and a half on a budget of \$130,000,000, representing a program for one hundred different governmental agencies employing upwards of fifty thousand men and women, and affecting millions of lives, concluded the taxpayer's participation in budget making. His appearance was ignored by the budget pruners, to

whom taxpayers' day represented merely an extension of time for their labors.

After this pretense of hearing evidence, executive sessions were held by the board of estimate and apportionment, in which additional reductions or increases were made by rule of thumb and log rolling, and finally appropriations were adopted by formal resolutions. Thereafter the instrument was transmitted to the Board of Aldermen, who may not increase, but may reduce the items in the budget. Again heads of departments were heard and a few taxpayers listened to with the result that a few reductions were made on the assumption that allowances granted were excessive. A veto by the mayor reestablished as the budget the appropriations originally adopted by the board of estimate and apportionment.

The appropriations as finally made were so expressed as to make it impossible for a department head to learn which of his requests had been granted and which denied, whether increases in salaries asked for had been authorized or new positions allowed. The consequence was that the budget, usually representing an increase in the appropriations over those of the year before, gave wide scope and liberty to the department head to utilize his resources in any way he saw fit, with the confident assurance that he never would be called to account to explain results produced from expenditures. This then was the process of budget making in 1906:

1. Submission by department heads in mid-summer of an estimate of expenditures for the fiscal year beginning on the following January, based upon inaccurate records of expenditure for the first six months, and more inaccurate guesses for the second six months.

2. Tentative allotments of appropriations by pro rating increases on the basis of last year's allowances, without regard to departmental needs or costs of service rendered; pretense of taxpayers' participation in the deliberations of the financial board, grants placing a premium upon extravagance and waste; a process described by the present comptroller as "farcical confusion."

The Bureau of Municipal Research began in 1906 an effort, which continued through the next two years, to make possible an honest statement of needs in departmental estimates; intelligent advocacy and explanation of their requests by department heads; intelligent criticism and analysis of departmental estimates by the fiscal authorities; and intelligent participation in budget discussions by press, citizens and taxpayers.

The first step taken was to analyze, with the consent and coöperation of the health officers, the expenditures of the Department of Health for the year 1906, according to its functional activities. This proved impossible with respect to the expenditures for supplies or supplies consumed, because there were no records of distribution. In the matter of pay-rolls, the process of analysis involved a complete rewriting of the department's records. Each of the five or six hundred employees was traced day by day or week by week back through his various employments during the year, and a statement prepared showing as accurately as this or any other process would permit the actual pay-roll expenditures on account of each of the departmental functions.

This analysis proved a revelation to the health officers. Whereas they had assumed that all charges to an appropriation were for the purposes of that appropriation, they now learned that the kind of work a man did had not been a guide in determining the account to which his salary was to be charged. For example, the department had reported in its estimate that it had employed in 1906 one hundred inspectors in making medical examinations of school children. The analysis showed that the average number actually so employed were about sixty. The remainder had been quietly abstracted from time to time to work in other divisions although their salaries continued to be charged to the school children's account.

This analysis was presented to the board of estimate and apportionment on taxpayers' day, with the proposition that in making up the budget for the health or any other department, the first necessary step was to learn the things the department had to do, what it had cost to do them during the past year, how much had been done, and how much more it expected to do next year. The Bureau said "obviously there will be more to do, because the department reports 27,000 lives lost last year from what they call preventable disease." The proposition was first called academic by the mayor, and then good sense by the comptroller. A representative of the Bureau was asked to confer with the real budget makers behind the scenes. The conference was held, and because the Bureau was able to point out the payroll cost of each activity during the current year, it prevented the time honored arbitrary reduction and secured an increase of half a million dollars over the appropriation for health work for the year before.

It was next suggested that the city do for every department what

had been done for the health department, namely, establish a functionally segregated budget, showing, as the comptroller described it, "what's what." The board of estimate and apportionment resolved to undertake the work and passed the job along to the comptroller. Six months later the Bureau inquired how the segregation was progressing, to learn that the work had not yet been begun on the functionalizing of department expenses. The result was that the comptroller asked the Bureau to help, and it has been helping ever since.

A conference committee was formed consisting of representatives of the Bureau and the comptroller's department. Under its direction, and after six months of analysis, a completely functionalized budget was prepared for every major department of the city government. The next step was to devise and install accounts in the department which would develop the information of cost and expense continuously and accurately, which could then be only approximated by a process of costly analysis. The Bureau devised a standard system, secured the comptroller's approval, and an order for installation in four departments on January 1, 1908. When the work of installation began the comptroller found himself without an adequate technical staff to prosecute the work. The Bureau placed its employees at his disposal, and supervised the installation. The next step in putting the city on a business basis, was to reorganize the comptroller's office as the central business office, so that it could in fact, as well as nominally, control the receipts and disbursements of the city. The Bureau studied the problem and prepared a plan. After first submitting it to three leading accounting houses, it was submitted to the comptroller, who adopted it as his plan of reorganization. He then proceeded to organize in his own department a staff of 12 expert accountants, nominated to him by leading public accounting houses. This staff, together with experts from the Bureau, under the supervision of the joint committee, is reorganizing the business methods of the city from top to bottom. The work of reorganization will not be completed this year, or next year, or the year after, but already significant improvements have resulted.

The Bureau had devoted a considerable part of its energies to constructive work. But as a basis for this constructive work, it conducts, continuously, investigations not only of the methods employed, but the results secured by city departments. Its first important study of this character led to the removal by the governor of a

borough president, and to the revival and reorganization of the official investigating branch of the city government, the commissioners of account, whose two hundred thousand dollar payroll prior to 1907 had been used to harbor political incompetents, and to manufacture whitewash for departmental waste and official misfeasance.

Similar investigative studies have led to various official retirements, and to conclusive evidence of the existence of enormous waste in the conduct of the city's affairs. Through the budget the Bureau has begun to secure recognition of the extent of this waste, as for example by bringing about reductions in the appropriations of two borough presidents, in one case by an amount of \$225,000 below the allowance for the year before—an unprecedented happening.

The Bureau finds of no peculiar significance and takes no special interest in the mere fact that enormous waste occurs in the conduct of municipal business, but it is keenly interested in the fact that community needs are not filled, that funds for purposes of education are insufficient, that health work is neglected, that death, disease, distress, ignorance and crime are increased as a direct consequence of this waste. For this reason it is actively engaged in co-operation with public officials, legislative committees and charter commissions in devising methods of preventing or reducing waste through graft, incompetence or clumsy methods, to the end that all resources of the community may be employed to promote the beneficent, co-operative activities of the community.

THE BOSTON FINANCE COMMISSION.

BY HARVEY N. SHEPARD.

I regret that the suddenness of the call to speak upon this theme forbade the preparation of a paper, and compels me to talk in a random manner from such memoranda as I was able to put together hastily this morning. If the Secretary of the Commission were present, as was expected, he could give to you inside information; but I must speak from general knowledge, except as to the beginning of the Commission, with which it happens I was concerned personally.

Late in the autumn of the year, 1906, Walter A. Webster, Esq., then in my office, a young lawyer who had won high reputation for ability and honesty in the legislature of the Commonwealth of Massachusetts, then expecting to make an address as Presiding Officer of the Republican City Convention, consulted with me relative to the financial situation of Boston, the enormous cost of its maintenance, the rapid increase of its debt, and the remedy therefor, and I agreed with him that the first requisite was a thorough knowledge of the actual condition and the causes thereof, that this information could be obtained best by a commission, and that, inasmuch as a portion of the debt and expense was due to state boards over which the city had no control, it would be better for such commission to be appointed by the Governor of the Commonwealth rather than by the city.

Mr. Webster made this address and it created a decided sensation. Subsequently, the state features of the proposed investigation were omitted, and the Commission was appointed by the Mayor of the city, consisting of seven persons nominated by certain specified organizations representing trade, real estate, the banks, the labor unions, and various citizens' associations which have been organized for local improvements in the several suburban districts which formerly were separate communities. In June of the year 1907 the Legislature passed an act giving to this Commission authority to summon witnesses, enforce their attendance, administer oaths, and order the production of books and papers, and the city council

appropriated a sufficient sum for an investigation. The Commission organized promptly with the choice of a former mayor as its chairman, and selected a secretary and counsel, and employed experts, and went vigorously to work, at great sacrifice of time, as they are men of affairs and serve without compensation.

The problem before the Commission may appear more plainly if a short statement be made of the form of government which now prevails in the city of Boston. It had been a town for two hundred years when, in the latter portion of the first quarter of the last century, it became reluctantly a city. Its charter provided for a common council to take the place of the town meeting and for a board of mayor and aldermen to take the place of the selectmen. Unfortunately a mistake was made here. The selectmen of towns are the servants of the town meetings and subject to their control, and also they perform only executive duties; but under this charter the mayor and aldermen were given not only the executive functions of selectmen, but were made a second legislative board, with a negative upon the action of the common council. The evil of this mistake was intensified when subsequently the mayor was given the veto power and was separated as a distinct official from the aldermen. This arrangement of two legislative bodies, each with a negative upon their other, and a mayor independent of both and with a veto upon the action, is an anomaly and is unknown elsewhere. In fact in Europe it would be considered absurd to establish a council and then establish another power separate and distinct. Under this system of checks and balances and division of responsibility, with no single person or body of persons actually in full control, it is no wonder municipal government in the United States has been a failure.

Substantially this form of government continued in Boston up to the year 1870, with the several departments administered under the supervision of committees from the aldermen or of joint committees from the aldermen and the common council. In that year a change was made by giving the laying out of new streets or widening of old streets to a board of street commissioners to be elected by the people. In the following years other boards took charge of the repair and erection of buildings, of the fire service, of the laying out and administration of parks, and of the water supply; and finally the police was put in charge of commissioners appointed at first by the Mayor, and now by the Governor of the state. In the year 1835 there was a further change by which the aldermen and common coun-

cilmen were divested of all administrative powers, and these were lodged entirely with the Mayor, who was given the appointment of other officials, subject in some cases to confirmation, and also unlimited power of removal. He was, in fact, made for a limited time an autocrat, without responsibility to any one for the performance of his duties. This change, however, did not remove the complication of diverse interests, which has been increased from time to time by subsequent acts of the legislature in establishing various commissions appointed by the Governor, such as a commission to build a court-house, a commission to provide rapid transit, and commissions to supply water, sewers, and parks, and to dam the Charles river, over whose actions the Mayor has no influence or control whatever.

This is not the whole of the problem. Some of the city departments obtained from the legislature charters of incorporation, and to this extent became independent of the city council. When the trustees of the Public Library, for instance, decided to put up a new building they went as such corporation to the legislature and obtained authority therefor, and erected a building at an expense payable by the city over which the city itself had no control. Moreover, in the year 1885 the legislature passed an act restricting the tax levy in the city to nine dollars upon a thousand dollars of valuation, and the debt to 2 per cent of this valuation. Naturally the whole sum, which might be raised both by taxes and by loans, was considered a sum to be spent; and year after year it has been appropriated substantially at the beginning of the year; and for every emergency the legislature has passed acts for loans outside the debt limit, so that, while before the passage of this act the whole debt of the city was less than 2 per cent, it now is more than double this sum. Another and more serious effect of these changes has been the deterioration of the city council since, becoming mere debating societies with almost no power, they no longer have for members such men as used to go there. The payment of salaries to the members also has been bad, as this naturally has called there some persons simply for the sake of the salaries, who otherwise would not think of going. In fact, the whole position of the city, so far as its control is concerned, is illogical and inconsistent to the last degree. Its chief executive, who should be the servant of the community, has become its master, and its city council, which has the duty of imposing taxes and contracting loans, has little control over the expenditures of the moneys, inasmuch as many of the departments may spend as they please

without any regard to the sums voted by the council. It also is under obligation by law to make ordinances for the city, and yet the police, upon whom it must depend to enforce these ordinances, is beyond its control.

It is quite evident, therefore, that a large and intricate problem was before the Commission, which it attacked with great energy, industry, and absolute fearlessness. There has been remarkable unanimity in its conclusions, which so far have been reached without dissent. It has carried with it public confidence from the beginning, and such assaults as were made by aggrieved persons upon some of its members have fallen harmless. It reported to the city council from time to time the results of special investigations so that public interest has been kept alert. There was found, as might have been expected from our complex system of government, extravagance in the numbers of employees and great waste in the execution of work, different departments doing work in the same locality without concert. Many of these evils already have been remedied. There also were found many cases where supplies were purchased for political reasons at prices much above the market rates. The requirement for contracts for public work of any amount was evaded repeatedly by what is known as a split contract, that is the division of the whole work into small sections, and so these contracts were let without public notice. Actual wrongs also came to light in the purchase of lands from interested parties at excessive figures, and in the payment for supplies where these were not of the quality required. Also in one case at least there was a combination as to bids for a large piece of work so that competition was prevented, and the excess was divided afterwards among those interested. There has appeared but little of the vigilance which the advocates of an autocratic mayor told us we should have on the part of that official, notwithstanding the great power put in his hands and the large salary paid to him. In the beginning of last year, when a new Mayor came into office and many exposures by the Finance Commission already had been reported, some earnest people wished the legislature to do away entirely with the city council, and vest the whole government in the Mayor with the concurrence of this Commission; but the good sense of the people prevailed, and it was felt to be better to wait in patience until after the work of the Commission was complete and its report made.

What the remedies will be and what recommendations the Com-

mission will make it is impossible of course for me now to say in advance of its report; and therefore I only will refer briefly to some of the proposals which have been made to it at the hearings which it has given from time to time, and also by written or printed communications. Every one recognizes that the present system of government is an entire failure, and that the evil is aggravated by the increasing falling off in interest of the citizens in the affairs of their city, and the diminishing number who go to the polls or take any part in affairs. Various associations have been formed to meet these evils, and they have done excellent work, notably the Good Government Association which maintains a permanent office and furnishes every year the public records of the candidates for office; but such associations share the inevitable weakness of lack of power, and sooner or later, the uniform experience has been, they pass from usefulness. There also has been a growing tendency to go to the state, and many matters which should have been done by the city itself now are controlled by state legislation. An abiding evil in all American municipalities is the lack of power. They are treated as mere territorial sub-divisions of the state; and, while a private corporation may do anything pertinent to the purposes for which it is chartered, a municipal corporation can only do those things specially given it to do. For instance, Boston was unable to connect two of its own buildings by a wire over or under its own street. Cambridge could not build a conduit under its own streets for the carrying of wires. And the town of Swampscott could not remove the persons it had elected as its health officers though the town meeting found they were guilty of misconduct. It would be a great benefit if, in place of being considered corporations with only enumerated powers, our municipalities were treated like those upon the continent of Europe and were considered to be entitled to do whatever is pertinent to the purposes of the municipality and in conformity to the general laws of the state.

One suggestion which has been urged by many and which is not by any means new is the control of the city by its taxpayers on the plausible ground that they who pay the bills should be considered to be the only stockholders. This suggestion, however, loses sight of the fact that a municipality is something more than a business corporation, and that it has to do with other than business interests. Moreover, the property qualification if adopted would not last. It has been tried again and again and always has proved unstable.

It once prevailed in the Commonwealth itself, but was abandoned, so that suffrage rests now upon manhood and not upon property. It would be a cause of great discontent if two sorts of suffrage existed side by side, one for state and federal affairs resting upon manhood, and another for municipal affairs resting upon property only. Such a restriction is against all modern tendencies and never would be allowed for any length of time.

Another suggestion is to increase the power of the Mayor still further by giving to him full control of appointments and removals without concurrence by anybody, and also authority to veto any portion of an ordinance or any item of an appropriation bill, and to lengthen his term of office to four years. Against this suggestion the objection is made that the great increase of the power of the mayor in the year 1885 has not given to Boston better or more capable mayors than it possessed before the change in its charter, and that, in the light of experience, there is no good reason to expect any improvement from further efforts in the same direction. Moreover, two great evils have developed to an unprecedented extent during the last twenty years under an autocratic mayor; one, the making of contracts in secret, which formerly were debated in open meetings of the council; and the other, the organization of a partisan machine which has fastened itself so firmly upon the city that the Mayor frequently has been made more its tool than the chief magistrate of the citizens.

It further has been suggested that if the Council be continued it shall have nothing to do with the budget and the levy of taxes, but that these shall be committed to a board either elected by the citizens, or appointed by the Mayor. If the members of such a board are to be elected by the citizens then yet more names will be added to a ballot which already is burdened to a bewildering extent. If the members are to be appointed by the Mayor then we shall have departed from the very first principle of democratic government, that the power of the purse must rest with that body which represents the people. The struggle for liberty everywhere, and for free institutions, always begins with the struggle to get some control over public expenditures, and it will be a remarkable thing if, in a country which heretofore has been the foremost exponent of free institutions, such control shall be abrogated voluntarily. Moreover, the danger to the republic of a growing plutocracy is sufficient now without any addition in this direction.

It also has been suggested that there shall be elected from small districts a large council with authority only to make inquiries, relative to municipal matters, and to make recommendations. Its position towards the city would correspond in some respects to that of the railroad commissioners of the Commonwealth towards the railroads, they also having authority to recommend and not to order. Some misgiving, however, already has arisen, especially over rates charged for express services, where the companies have not obeyed the recommendations of the railroad commissioners, and it is quite likely that in the near future the law will be amended so that the commission will direct as well as recommend. The doubt is well founded whether the proposed council, after its first trial, would continue to attract men of capacity, since usually it is found that such men do not remain willing to give services without power.

President Eliot of Harvard University has urged strongly that Boston shall be put in charge of a small board of commissioners, not, however, following the Texas and Iowa plans completely, as he would allow the several independent boards and commissions, which now exist, to continue as heretofore. A commission form of government, the commissioners appointed by the Governor of the Commonwealth, has been imposed already upon the city of Chelsea in order to meet the special emergency which arose from the great fire which nearly swept away the entire city. The city of Haverhill also had adopted voluntarily such a form of government. These are the only two cities so far in the Commonwealth, and both are small. We have been familiar, however, with government by commission in our counties for about two hundred years, each county of the state, except Suffolk County, which includes Boston, being administered by three commissioners elected by the people of the county, and no one claims that this form of government has been satisfactory in these counties, as it has been the most extravagant kind of government the people of the Commonwealth have known. Moreover, there can be no intelligent election of commissioners since the people never know what they propose to do, nor indeed what they have done until after it has been finished and the expenses have increased the tax bills. Of course we all are familiar with the government of the city of Washington by a commission appointed by the President, and generally it may be said that the administration has been efficient. However, it is an anomaly that the capital of a free country should be without self-government, and should have no right to suffrage of

any kind, and it is not strange that many residents of Washington feel the shame and humiliation of such a position. One objection to a government by commission is that the matters which properly are legislative in character never will be left to such a body to establish, and inevitably the legislature will become the council of the municipalities, just as Congress has become the council of the city of Washington. The evil of secrecy is nearly as bad as in the case of an autocratic mayor, and also the probability of partisan machine control.

It is advocated that we go back to the charter which was suggested in 1825 and vest the control of the city in a large council to be selected one from each of many small districts; not because there is any diversity of interests in the city that district representation is necessary, but because, if the district be small, the voters will know the candidates, and, there being only one official for them to choose, attention necessarily will be concentrated upon him. In this way the opportunity will be given for intelligent selection, and if the council be the real seat of power it is likely to attract to its membership men of capacity. When complaint is made that the membership of the legislative branches of our city governments is poor in quality it should be remembered that we purposely have made it such by taking away all incentive for the services of capable men. If we want large men we must give them large things to do; and experience shows that it always will be possible then to find them. The executive branch of the city would consist of a mayor and aldermen, the number to be small, but just how many to depend upon the size of the city, say in Boston five in all; and this one board would take the place of all existing boards and commissions. In this way there would be a concentration of authority and of responsibility, and the danger of abuse would be removed because the members of such a board would be the servants of the council and not its masters. The mayor would be simply the chairman of such a board and would have of course no veto power. We never can expect to succeed in obtaining an efficient and democratic municipal government unless we establish one authority; and that authority will not be stable unless it be representative of the people.

Some say that the form of government is immaterial and that it is good men we want in office. Of course we want good men, but the best men cannot accomplish so much where the forms are bad as they might if the forms be good. The best carpenter will do

poorly if you give to him poor tools. We need both good tools and good workmen. It is the province of the legislature to supply the good tools, and then for the people of the municipality to supply the good workmen.

THE NATIONAL MUNICIPAL LEAGUE

BY CLINTON ROGERS WOODRUFF

Secretary of the League

Better municipal administration will come when the people awaken to the need of it. As Dr. Goodnow in his "Politics and Administration" (which in a way is an outgrowth of the National Municipal League's work on the Municipal Program) said in regard to the use of permanent experts in the higher posts of the public service, "That this can be accomplished by any changes in the law may, perhaps, be doubted. That it will be accomplished so soon as an educated and intelligent public demands it, is a moral certainty."

The League is an active agency in the betterment of American municipal administration in that it is directly and particularly engaged in creating "an educated and intelligent public" in the matter of municipal government. From the beginning of its activities in 1894 it has sought to promote a more general interest in municipal questions and especially in their political and administrative aspects.

Dr. L. G. Powers, the Chief Statistician of the Federal Census Bureau, in an address before the League at its Pittsburgh meeting on the "The Bureau of the Census as an Agent of Municipal Reform," put the case in this fashion: "In summing up the results of these seven years' use of the census schedules, I think I can best state the same by making use of some of the terms of the old religious revivalists of a half century ago. They employed three words to express the different changes in the minds and acts of the sinners as the result of the efforts of the churches and Christians to reform the evildoers. Those words, or phrases were, 'conviction of sin,' 'conversion' and 'regeneration.' Men were said to have been convicted when they were satisfied that they were sinners; but such conviction amounted to but little unless the mental impression led to some action by which the one convicted was turned sharp around from an evil course and began to walk in a correct one. Such a turning around was spoken of as conversion; but starting on such a good road, though commendable, was not enough; the converted must walk sufficiently in that road to become

changed in all his vital relations with the world. Such a change was called regeneration.

"Employing these religious terms, I will begin my summary of results by saying that as one of the general results of the use of the census schedules, reinforced by all of the other factors working for municipal reform, city officials as a whole have become 'convicted' of the folly of diverse accounts without system and without uniformity. They have become convinced of the value of accounts uniform for all cities, and arranged in a form that will permit of using accounts as a test and measure of the governmental economy and efficiency as well as of fiscal honesty."

"I am glad that I can report more than the foregoing; I can say not only that all city fiscal officers have been convicted, but convinced of the desirability of uniform accounts and reports for the purpose of making such reports the measure of official economy and efficiency. A very large proportion of the fiscal officers of our larger cities have become converted; they are facing in another direction from what they were ten years ago."

To continue this ecclesiastical simile the League labors as an evangel to convict the American people of their municipal sins and shortcomings and to bring about a change or conversion in their municipal conduct.

Its first object according to its declaration of principles has been to multiply the numbers, harmonize the methods and combine the forces of all who realize that it is only by united action and organization that good citizens can secure the adoption of good laws and the selection of men of trained ability and proved integrity for all municipal positions or prevent the success of incompetent or corrupt candidates for public office.

To this task the National Municipal League has addressed itself, with, I am happy to say, an increasing measure of success. Since its formation in May, 1894, it has steadily pursued this object. Thanks to its guidance and inspiration, new local organizations have been started and old ones revived and reorganized. Newspapers have been interested and as a consequence have coöperated in spreading information and creating public sentiment. The printed page and the spoken word have been utilized to the same end. In short, an active, aggressive, persistent propaganda has been carried on to the end that the American people may appreciate the importance and growth of the municipal situation.

The New York Evening Post in an article on the work of the Bureau of Municipal Research described its propaganda work somewhat in this fashion: "Its secretary attends to the publicity end, not only in New York, but throughout the country. He is carrying forward the propaganda of municipal research with persistence and vigor. He is not insensible of the value of publicity, and his audience is a wide one. He is constantly in touch with the mayors and controllers of the first 100 cities of the United States. The editors of the principal newspapers in these cities are also on his mailing list, and whenever the bureau completes a piece of constructive work, that fact is heralded throughout the land within a short space of time. He lectures, too, before colleges and civic societies, and to his efforts is doubtless due in large measure the growth of the municipal research idea. That the bureau has impressed the country is proved by the flood of letters it receives from persons and organizations interested in good government. They desire to get advice and to hear about the results achieved in this city with the purpose of applying the research treatment to the ills of their own municipalities." The same may with equal force be said of the National Municipal League's purpose and work for higher municipal standards and for improved methods of municipal business.

Some idea of the measure of the effectiveness of the League's leaflet and pamphlet publications may be gathered from a few illustrative instances. As to the leaflet, "The Ignorance of Good Citizens," a new California member wrote, "This hits me pretty hard, so hard that I came to my office yesterday (Sunday) and did some 'tall digging' and didn't get there then. Pray excuse the vernacular, but it seems to fitly express my feelings. I think if I could get a few duplicates of that pamphlet, I would use it." Another leaflet, reproducing a brief address before the League at Harvard, has run into a number of editions; it has been generally reproduced, it has been reprinted in the local columns of the papers and commented on editorially and excerpts sent out broadcast by syndicates, and although it was first printed in 1902 it is still appearing under various guises, and although it is not always credited to the League it is doing good work in pointing out the "Public Service by Citizens in Private Station," and continues to furnish encouragement and inspiration to ever new groups of men.

Early in December the editor of a metropolitan journal asked if we had any spare copies and back numbers of past reports and pub-

lications of the National Municipal League which we could send to him from which he could get quotations, bearing on civic affairs, one of which he was responsible for putting on his editorial page each day. A short time before the editor of a leading western paper wrote: "Let me thank you again for the pamphlets you have been sending lately. I don't know how many editorials I have dug out of them. The League seems to me an invaluable clearing house for ideas. That address of Sparling's was especially good. It furnished three editorials."

The League's clipping sheets serve a similar purpose and are widely used, not only at the time of their issuance, but for a long time thereafter. We have found them served up for effective use so long as three years after their first appearance. They also serve to keep our members in touch with current development and to supply speakers with much needed data.

The various papers read at the annual meeting do yeoman service, not only in the published volume of proceedings, but in the same way as the clipping sheets. They are reprinted time and again, and some magazines regularly depend upon using a certain number of these productions. Moreover they appear as special articles and as the basis for extended editorial comment. In this way they continue to do permanent educational and inspirational work.

The League maintains close relations with the leading libraries of the country and especially with the state library systems and the legislative and municipal reference libraries which are springing up all over the country. One college librarian has had a special bulletin board placed in his reading room and devotes it exclusively to the circulars and clipping sheets issued by the League. The reference libraries are natural allies of the League and along municipal lines it is serving as a temporary clearing house for them, although eventually they will have to create one of their own, with the League as a component part, as the latter has neither the machinery nor the resources to do what is essentially a piece of library work. The significant thing to be noted in this connection is the fact that the League is laying the foundation for a useful extension of library facilities and promoting the idea that the library can be and should be made an important factor in the development of a sound municipal public opinion.

The annual meetings of the League are among its most effective means of emphasizing the importance of the municipal problem. As *Bradstreet's* pointed out after the recent Pittsburgh meeting:

"It is well to have the importance of proper municipal government emphasized as it is once a year by such organizations as the National Municipal League, which met at Pittsburgh this week. The mayor of that city, Mr. Guthrie, in setting forth the needs of the cities of Pennsylvania, really voiced a need of the people of all municipalities when he said that they must awaken to a full realization of the great influence which the government of a city has both upon the lives of the individuals residing within its limits and the perpetuity of our national life. Sound, too, was his suggestion that cities should be given full power to solve each for itself its individual problems, and not be subject to constant interference at the hands of state legislatures. The discussions of the league and of the American Civic Association, which met at the same place, were largely concerned with most practical suggestions for the betterment of sanitary and municipal conditions in cities, and the function of business bodies in improving civic conditions. The membership of these bodies is widely distributed geographically, and their efforts should be distinctly helpful to the purposes they have in view."

These annual meetings are most serviceable in promoting the purposes of the League. They result in a broader view of the work; in a helpful interchange of ideas and experiences, and in quickening not only the life of the League, but of its affiliated (organization) members in both local and general missionary work. Abundant testimony to this effect might be quoted. Suffice it to say that after the Pittsburgh meeting one active militant political worker declared that he could not afford to miss another session; the secretary of a great business organization said it was certainly the most helpful meeting of the kind he had ever attended and a college professor expressed an opinion to the same effect, and a useful member of a state legislature stated in one of the public discussions that he had received his first impulse to enter upon public work from attending one of the League's annual conferences.

These meetings, as well as the central office, constitute a clearing house between reformers, public officials and civic workers (an increasing body of trained men) and quite as important, between all sections of the country, North, South, East and West, for the consideration of experiences, new ideas and the new application of fundamental principles and old established methods. Lieutenant C. P. Shaw, U. S. N., retired, in an address before the League of Virginia Municipalities said, "The distinguishing feature of this first decade of the

twentieth century is the organized effort to improve social and governmental conditions. I congratulate Virginia on the existence of the league that is here assembled. The moment a man begins to take counsel of others it is evident that he does not think that he knows it all and from that moment he may be expected to do better things, as the result of the information so obtained. The benefit received by the consultation of the officials of the different cities of the state suggests that it might be well to extend the scope of our inquiry and see what is being done beyond our borders. The most powerful organizations for governmental betterment is the National Municipal League with an individual membership of 1500 and an affiliated membership of 115,000. The Advisory Committee of this League is composed of sixty men, representing cities of every section of our country. To this committee was assigned the task of determining what was the question of most vital importance, so as to have it discussed at the next meeting of the League. After most searching inquiry they unanimously decided that the subject for debate should be 'how to make the average citizen realize his civic responsibility and how to make this realization a working force.'"

The League is engaged in what may be called a coöperative work in bringing local reform bodies, business organizations, public officials, educational bodies, state and national societies, into coöperation with each other in the matter of municipal work, and with the League. "This letter," a recent correspondent wrote, "is a bow drawn at a venture. Somewhere I have read that there is such a secretary and such a League and that such secretary resides at Philadelphia," and then he proceeded to ask for help in local work in which he was engaged. From a North Carolina worker came this word: "It may interest you to know that we have succeeded in organizing a good government club for this community. At present we number over three hundred members. To this end the National Municipal League's experience and information which I have used from time to time have been invaluable."

As showing not only another phase of this sort of activity, but as indicating the efficiency which follows national affiliation and coöperation the following from a secretary of one of our affiliated organizations may be quoted: "Have you a list of the different civic and good government organizations in the different cities of the United States? If so, I should be very glad to receive a copy of the same or if not, of a list of the associations or clubs associated or coöoperating with the

National Municipal League. I find that information is both more forthcoming and accurate when sought from these associations than from most any other source."

I may be permitted to paraphrase a letter of suggestion the League received last autumn from one of its earnest southern members to illustrate how its services are availed of: "For your information, in regard to what looks like a good outlook for disseminating some information upon municipal charter reform, I am taking the liberty of herewith enclosing you several clippings from the morning paper of this city outlining some suggested changes, and quoting from a letter of the League's, giving its objects and an account of the meeting of citizens held for this purpose, included in which is a partial list of some of the citizens present.

"As you will see from the account of the meeting a committee of nine was appointed to prepare a plan of permanent organization and report to a meeting to be held later. At present the members of the Board of Aldermen are elected by the precincts, each precinct electing one alderman, and they in turn elect all of the city officers, with the exceptions of the mayor, city clerk and tax collector. Seven of the present aldermen are not property owners, and this in a city of 18,000 population with an area of four square miles, and there has been a great deal of criticism of the Board, which is dominated by a theatrical agent and bill poster, and it is evident that some changes in the personnel of the board will be made next May, as well as an effort made to get some changes in the charter.

"Realizing that it is impossible to send literature to every voter, and that the usual circulars are wasted when sent out indiscriminately, and that effective work can only be done through parties whose opinions will influence others, I would suggest that you send some literature to the following named gentlemen, as they are all influential, and through them may be found the means of getting effective work. . . .

"Three of the above named are on the committee to prepare the plan of organization mentioned above. As to these gentlemen, _____ is a lawyer, over thirty years a trustee of the University and a member of the Standing Committee of the Diocese and a delegate to the last five or six General Conventions, including the one at Richmond last year; _____ a very influential member of the Baptist denomination, both locally and in the state, a man who began life as a printer; _____ present head of the _____ Fra-

ternity (Southern Order), a lawyer who is not dependent upon his practice for a livelihood; ——— a leading jeweler and a member of the present Police Commission, an excellent man and thoroughly interested in any subject he may study, for several years chief of the volunteer fire department; ——— a former cotton broker, now president of ——— Cotton Mills and ——— Cotton Mills, member of the School Committee of ——— township, one of the leaders in the recent prohibition election in this city; ——— a leading surgeon, a graduate of the University of Pennsylvania Medical School, Class of 1894; ——— newspaper correspondent and Secretary of the Chamber of Commerce, would give wide publicity to his views on public affairs, and is now interested in stirring up civic pride, and is in a very receptive frame of mind.

"These suggestions are offered with the hope that they may be of service to you and enable you to put yourself in local touch with the movement, should you think it a good opportunity, as it seems to me, to advance the work of municipal reform."

The league in question was organized and a commission to frame a new charter was appointed and a new municipal spirit has since been manifested all along the line.

Chambers of commerce, boards of trade, and business bodies generally are taking more and more interest in important phases of municipal work. The Pittsburgh Chamber of Commerce about two years ago joined the League; in 1907 it was represented at the Providence meeting by two delegates who prepared an elaborate report, which in turn was printed and sent to every member of the Chamber. Here is one of their recommendations: "They (the members of the Chamber) would have gained a valuable education and a wider horizon of knowledge as to municipal activities in other cities. This enrichment and stimulus would have been acquired through participation in the informal, but practical and helpful, Round Table conferences which were sandwiched between the regular sessions, and through hearing the formal treatises and extemporaneous debates of the convention, upon the same questions which these committees now have in mind and upon many other questions which this chamber will, sooner or later, have to take up. Your committee believes that hereafter the rapidly increasing importance and influence of the National Municipal League, in its work for the better government of cities, and of the American Civic Association, in its work of beautifying and improving the conditions of living in cities, will warrant

the Chamber in sending to their annual meetings a good representation from those committees which should be especially interested in the subjects announced for the conferences."

The interest aroused by this report was so considerable that the Chamber invited the League to hold its 1908 meeting under its auspices, which was done. Moreover, its last annual report chronicled a series of achievements along municipal lines, which could well have been regarded as an important year's work for an organization devoted exclusively to civic activities. The Cleveland Chamber of Commerce, which enjoys the reputation of being not only one of the foremost business bodies in America, but one of the most effective factors for civic advance as well, has for years had its representatives attend the annual meetings.

Coöperation with public officials is increasing rapidly. At one time there were six governors enrolled and several of them made constant use of the League's resources. The number of mayors, auditors and councilmen who avail themselves of its resources, always quite considerable, is now assuming large proportions. Here is how one of them felt about his membership:

"Some time ago I was a member of the League, but I think about a year ago I felt that I must drop my membership, and did have my name canceled from your list of membership, although I disliked very much to do it. I feel that the League fills an important place in the municipal field and is a source of great benefit to its members, and it gives me great pleasure to enclose my check for \$5 covering the enrollment card herewith, and to feel that I am again to be placed upon the membership roll of a society which is doing a valuable work throughout the country, and is of great benefit to all who are interested in municipal matters."

From the beginning the League has promoted a close affiliation with educational institutions, and in 1900 it appointed a Committee on Instruction on Municipal Government in American Colleges and Universities, with the late Dr. Thomas M. Drown, then President of Lehigh University, as Chairman, which was the commencement of a long and careful effort to bring to the attention of educators the importance of systematic instruction in municipal government and citizenship. This Committee prepared a series of reports, including syllabi and outlines of courses, which have been very generally availed of by instructors. It was followed by a special committee known as the Committee on the Coördination of Instruction in Municipal Gov-

ernment and composed of those actually giving instruction along those lines, designed to bring together for mutual conference and help the great number of men who in the several colleges and universities were giving attention to this subject. Of this committee, Prof. L. S. Rowe, of the University of Pennsylvania, was the first chairman, and Prof. W. B. Munro, of Harvard, the second and present Chairman. As a complement of these two committees, another was appointed to consider the question of instruction in municipal government in elementary schools. Of this Committee Superintendent William H. Maxwell of Greater New York was Chairman. This committee did for the elementary and high schools what the Drown Committee had done for colleges and universities, and it in turn was followed by a committee of which Prof. Jesse J. Sheppard, of the High School of Commerce, New York City, is Chairman, which is doing for elementary school instructors what the Munro Committee is doing for college and university professors.

In addition to work along these lines the League is seeking to bring the various educational institutions into closer touch with advance work both through the Baldwin prize, which supplements the formal work of instruction, through the college libraries and very often directly through membership.

The League has also maintained close coöperative relationships with such national organizations as the General Federation of Women's Clubs, the American Civic Association (with which it has twice met jointly in annual meeting), the American Society of Municipal Improvements, the National Civic Federation and the League of American Municipalities.

It has also kept in helpful touch with the various state leagues of municipalities, of which those in Wisconsin, Iowa, California and Pennsylvania are the leading. Moreover it has maintained close fraternal relations with the Union of Canadian Municipalities.

With all of these several bodies there has been not only a full interchange of thought and publications, but the League has placed its services and resources freely at their disposal and sought in various ways to bring them into helpful coöperation and coördination for a higher municipal life.

Let us now turn to the constructive side of the League's activities. Through its propaganda, through its insistence upon the moral, as well as the social, scientific and economic questions and through its services as a clearing house in municipal affairs, the League is awaken-

ing interest throughout the country, and through its committees it is educating the interest so awakened and through its program is directing it into effective channels.

The League's second declared purpose, to quote from its constitution, is "to promote the thorough investigation and discussion of the conditions and details of civic administration, and of the methods for selecting and appointing officials in American cities, and of laws and ordinances relating to such subjects." In the growing complexities of legislation and more particularly of the municipal problem an organization like the National Municipal League is essential.

Perhaps I can best describe the scope of the League's constructive work by quoting from a circular about to be issued in which its activities are outlined.

"If you have a general interest in municipal questions and wish to keep informed of the latest progress and thought, you can nowhere find more valuable material than in the League's annual and special reports.

"If you believe that city taxes should be distributed fairly and collected economically, and hope for an improvement in present methods, you will follow with pleasure the work of the League's committee on municipal taxation. Incidentally you can render a public service by assisting in the investigations of this committee.

"If you have found it impossible to compare or understand the involved accounts of American cities, and would like to see a simplified and uniform method of accounting adopted, you will find a system described in the publications of the League, which has many times proved its practical utility in actual service.

"If you believe that one way to secure good government is to inculcate sound principles in the minds of the children during their school days, you will find the subject covered in a most practical and intelligent manner by the League's Committee on Instruction in Municipal Government.

"If you approve of the formation and encouragement in the colleges of active clubs for the study of municipal problems and the duties of citizenship; if you believe that the members of these clubs on graduation should be guided at once to opportunities for lines of political usefulness in their respective cities, you will see that these labors also have been taken in hand by a separate committee of the League.

"If you think the present method of nominating elective municipal

officers can and should be improved, you will be interested in the notable progress of the League's committee on this subject.

"If you are interested in the movements for Municipal Reform and Municipal Home Rule, and believe that the city's local policy should be determined by its own citizens, read the League's careful and intelligent expert report entitled 'A Municipal Program.' It has become a standard work for reference in preparing new charters.

"If you are among those who feel it is a just reproach to instructors on civil government in our colleges and universities that strength is wasted through the difference caused by limited vision, you will find a committee of the League which confines itself exclusively to bringing together the men engaged in this work, so that each may benefit by the experience of all.

"Whether you believe in municipal ownership or oppose it, you will follow with interest the broad investigation on this live and insistent question which is now being made by the League's Committee on City and Public Service Corporation."

It will take us too far afield to describe in detail the constructive work that the League has done along the lines of charter reform, municipal accounting and reporting, nomination reform, taxation and municipal franchises, and is carrying on in connection with the police and liquor problems and municipal health and sanitation. It will suffice if we consider but one phase, namely, that which has to do with the constantly increasing interest in charter reform. Several years ago the *Kansas City Star* declared that "as a result of the experience of Kansas City and other towns, ideas and principles are advanced and are likely to find their way into the new charter which were not seriously considered at the time of the adoption of the present instrument in 1889. Since that time there has been extensive discussion of the functions of city government, especially by that association of experts known as the National Municipal League. The publication of the model charter proposed by this organization five years ago has had a marked effect. The principles embodied in that work have been used more or less fully in the new municipal constitutions of New York, St. Paul, Duluth, Portland (Ore.), Havana, Manila and other cities." This opinion was amply corroborated by the testimony of Charles J. Hubbard, who was a member of the Commission, and who wrote, saying, "I am glad to put in writing what I said about the National Municipal League. I consider the publications of the League altogether the most valuable contribution that has been made

to the solution of the problems of city government. In the drafting of a new charter for Kansas City two years ago, the Board of Commissioners got more assistance, I think I may say, from the publications of the League than from all other sources combined. The same is true evidently throughout the country wherever municipal constituent law is under serious consideration. In the dozen years of its existence the League has shown an admirable persistence in the study and development of the subjects undertaken."

Such seems to be the usual opinion of those who use the League's publications and recommendations as set forth in the Municipal Program. For we find Joseph N. Teal, a member of the Charter Commission of Portland, Oregon, using this language in transmitting its conclusions which were subsequently adopted and now constitute the present charter of that city: "We drew very largely upon the Municipal Program for many of the ideas contained in this charter, and the work of the National Municipal League is to a great extent responsible for the movement which prompted the creation of this charter board. This is the first time in the history of our city that the citizens have had an opportunity to prepare a charter or to vote on it, the ordinary procedure being that the person who happened to be in control of a party prepared a charter and submitted it to the legislature, and the people here would know nothing of its principles or details until after it had gone into effect."

This opinion was concurred in by Thomas N. Strong of the same city, who for many years has been a vice-president of the League and was president of the Central Municipal League: "The educational work that has been done in this city for the last ten or fifteen years is bearing fruit abundantly. The reports of the National Municipal League were very largely used in the Charter Commission and have been much read here in the last two or three years. As you can see by the explanatory note in the proposed charter, some elementary truths are obtaining lodgment in the public mind, and we are now in a fair way of reaping something of that which we have sown."

E. R. Cheesborough, Secretary of the Galveston Good Government Club, and one of the active men in securing the adoption of the now widely famed Galveston Plan writes that: "Few persons have more keenly appreciated the magnificent services done to the citizens of the United States by giving them better local government through the educational basis encouraged by the National Municipal League than the writer of this letter."

The Chicago Charter Commission of 1906-7 prepared for its use a digest of city charters containing statutory and constitutional provisions relating to cities. This work was edited by Augustus Raymond Hatton, then of the Department of Political Science of the University of Chicago, now of the faculty of the Western Reserve University of Cleveland. In the preface to the volume it was declared that "The preparation of this volume was undertaken at the request of the Chicago Charter Convention, the purpose being to provide the members with a convenient book of reference for use during the drafting of the new charter for the city.

"Beside the digest of actual legal provisions it has been thought desirable to reprint the greater part of the model corporations act from the Municipal Program adopted by the National Municipal League in 1899. This act was framed by Messrs. Frank J. Goodnow, Albert Shaw, Leo S. Rowe, Horace E. Deming, George W. Guthrie, Charles Richardson and Clinton Rogers Woodruff, whose names alone are sufficient to demand serious consideration for any plan of municipal government receiving their endorsement. The act is not a slavish adoption of the forms and methods of other countries, but without neglecting the lessons of foreign experience, it aims to take account of American conditions and American political ideas. It has been pretty generally accepted by leading authorities on municipal government as the best plan yet formulated for the government of cities in the United States."

When the first drafts of the Municipal Program were submitted for tentative consideration at the Indianapolis (1898) meeting of the League, the *Philadelphia Ledger* declared: "While it is too much to expect that the various legislatures will act favorably upon the recommendations of the Indianapolis Conference, we may with reason anticipate that the seed will not fall everywhere upon unproductive soil. The participants in the conference are practical men, representative of the best thought and noblest impulse of the country. They have no personal ends to serve, and in calling general attention to the abuses which prevail with respect to municipal administration, they are performing a high civic duty and deserve the unstinted thanks of every patriotic American."

The Program was finally adopted the following year (1899) at Columbus, and the *Engineering News* of New York, one of whose editors was personally present, had this to say about the result: "The Municipal Program adopted last week by the National Municipal

League, is one of the best pieces of constructive work ever done by an organization devoted to the improvement of municipal government. In judging its merits or defects, it should be considered primarily as a declaration of principles, with suggestions for putting them into effect and continuing them unviolated. At the same time, the charter outlined in the Program is in itself a better and more complete framework for a municipal government than any existing city charter which we now recall. The Program has been made flexible in order to permit modifications to meet the traditions and needs of different states and cities; but certain fundamental principles are always kept in full view, especially as wide a measure of municipal home rule as is consistent with the interests of the commonwealth," an opinion which the *News* has taken occasion to repeat on more than one occasion. In 1902 in answering an inquiry it said, "By far the most important contribution to the literature of charter reform is the proposed model charter and accompanying explanatory and critical papers published in 1900 under the title *A Municipal Program*."

Bradstreet's of New York fully shared this opinion, saying: "The feature of the proceedings of the municipal reformers at Columbus, Ohio, this week has been the presentation of a program of reform which deserves and should receive widespread attention from citizens interested in the betterment of the government of cities. Indeed, we can recall no formulation of the ends to be attained and of the method to be followed in attaining them at once so comprehensive and so seemingly fruitful in possibilities as that proposed as the result of careful deliberation by the committee on municipal program of the National Municipal League. Movements for the reform of municipal government have up to the present been largely sporadic, and in some cases they have carried within them the germs of reaction, owing in no small degree to a certain distrust of democratic institutions on the part of leaders among the reformers. The program to which we have directed attention is free from this source of weakness and aims to enlarge rather than lessen the amount and degree of popular responsibility.

"This program does not propose to leave the organization of the municipality, as it too often is, the mere creature of state legislatures. In that direction lies the ultimate frittering away of all responsibility for the good or bad government of cities. In common with the sanest among the wise who have devoted thought to the improvement of conditions in the government of cities, the authors of the program under consideration advocate a large degree of home rule."

So far as constitutional conventions are concerned, the Program has been most useful. The Rush Amendment to the Colorado Constitution is almost a reënactment of the League's proposed constitutional amendment. In 1901 the Secretary was invited to address a committee of the Virginia Constitutional Convention and outline the principles of the League's Municipal Program. As a result the Committee on the Organization and Government of Cities made a report, in which almost the precise language of the Program was adopted in so far as it relates to franchises and the question of bonded indebtedness. This report was adopted by the Convention.

This makes the second Constitutional Convention that has followed the League's suggestions, that of Alabama being the first.

So general and so widespread has been the use of the Program that Dr. Delos F. Wilcox, the author of *The American City* was justified in declaring in a paper on the Program that while "It has nowhere been enacted into law as a whole its influence has been felt practically everywhere 'under the flag' that charters have been framed, constitutions revised or municipal reform agitated. It was published by the Havana Charter Commission and by the Porto Rican and Philippine Commissions. It has left marked traces in the new constitutions of Virginia and Alabama, and has formed the basis for a sweeping amendment to the Colorado constitution. The Charter Commission of Portland, Ore., used it. The Charter Revision Commission of New York City adopted some of its provisions. The Duluth and St. Paul charters are in line with it in important respects. It has formed the basis for agitation for charter reforms in Wisconsin, Minnesota, Michigan, Delaware and doubtless many other states," and Professor John A. Fairlie, at the Pittsburgh meeting, concluded a striking paper on "Recent Charter Tendencies" in these words: "In the main, then, the principles of the Municipal Program of the National Municipal League have been steadily gaining ground. Its influence can be seen in the work of state constitutional conventions, in state laws and in charters for particular cities. In no one place, however, has it been adopted as a whole; and even where some of its principles have been accepted the details have often been modified. Indeed in several instances a distinct improvement has been made over the detailed provisions framed ten years ago. If one general criticism may be made of that Program, it is that the proposed constitutional provisions are much too long, and specify detailed provisions which should rather be left to regulation by statute or local action. But the

fundamental principles of the program still hold good, and should and will continue to be extended even more in the future than in the recent past."

It is needless to add that the League has come in for its share of criticism. It has been denominated "too rhetorical," "platitudinous," "unpractical," "a group of dinner reformers," "dreamers." Enough has herein been set forth to show quite conclusively the very practical and useful character of the League's work and activities. President McFarland, of the American Civic Association, in responding to an address of welcome at Providence said that he was inclined to suggest that the National Municipal League represented the man at his desk and the American Civic Association represented the man with his sleeves rolled up digging the mud out, but that he was reminded that he had heard a few years since the city accountant of Chicago describing in a meeting of the National Municipal League how the methods of accounting fostered under its organization saved to the city of Chicago a million dollars a year, and that it was the presiding officer, Mr. Deming, who had said, "And this is from an association of dreamers."

In the words of another observer who has a wide and first-hand acquaintance with municipal conditions in America (Charles Zueblin): "One has but to attend one of the sessions of the League to find that it is conducted by experts, and to find that the men who have charge of its activities are men who are versed in all the intricacies of municipal government, and who not only know what is going on in all parts of the country, but who are largely responsible for the good things that are going on in the cities. . . . If one looks at the work of the National Municipal League, he finds that the officials are identified with everything that is moving toward the improvement of the great municipal corporations and he realizes at once that he is in the presence of trained experts."

I have quoted freely from various authorities as I felt it would be more appropriate and convincing as well as more interesting to have others tell the story so much as possible, and to give the views of those who looked at it from the outside and therefore were more likely to have a better perspective.

To sum up, the field of the National Municipal League embraces
1st. Everything that relates to the forms or framework of cities
and to the laws or ordinances for them.

2d. Everything that relates to the methods for securing the

nomination, and election or appointment of the best obtainable municipal officials and employees.

3d. Everything that relates to the methods of city governments in dealing with the social, moral, educational, criminal, physical and commercial or business problems incident to modern municipal life.

4th. Everything in the way of measures to prevent crime, graft, corruption and inefficiency.

In all these lines the National Municipal League serves as an effective agency first for the ascertainment, investigation and comparison of facts, experiences and views, and secondly for the formulation, discussion and final recommendation of reliable conclusions and valuable information. In selecting from this wide field the League endeavors to choose such lines of action as are not being fully covered by other organizations or in which its coöperation will be welcome and helpful.

SOME RECENT TENDENCIES IN STATE CONSTITUTIONAL DEVELOPMENT, 1901-1908¹

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This paper confines itself to some of the more important general tendencies in state constitutional development during the years from 1901 to 1908,² leaving entirely aside any discussion of the unsuccessful efforts to obtain constitutional revision in New England, and mentioning only incidentally the Southern constitutional provisions with reference to the exercise of the suffrage.

The past twenty years have been perhaps the period of greatest activity in state constitutional development; and are comparable with the two decades, 1860-1880, during which, however, constitutional activity was to a large extent confined to the Southern States, as a result of the extraordinary conditions of the civil war and reconstruction periods. But the constitutional development during the past twenty years has been different from that of earlier periods in that it has been to a greater extent accomplished by constitutional amendments rather than by the adoption of new constitutions. During the past eight years, to which this discussion is confined, four new constitutions have been adopted: Alabama, 1901; Virginia, 1902; Oklahoma, 1907; and Michigan, 1908.³ From 1901 to 1907 one hundred and eighty-one state constitutional amendments were submitted to and adopted by the people, and during the same period one

¹A portion of Dr. Dodd's address will appear in the *Political Science Quarterly* under the title "The Growth of Judicial Power."

²For a review of constitutional changes from 1895 to 1903, see an article by Prof. J. B. Phillips in the *Yale Review*, XII, 389.

³For discussions of these constitutions see the following articles: McKinley, A. E. *Two New Southern Constitutions*, *Political Science Quarterly*, XVIII, 480; Sanborn, J. B. *The Oklahoma Constitution*, *American Law Review*, XLII, 362; Fairlie, J. A. *The Constitution of Oklahoma*, *Michigan Law Review*, VI, 105; Fairlie, J. A. *The Michigan Constitutional Convention*, *Michigan Law Review*, VI, 533.

hundred and one amendments were submitted to and rejected by the people; twenty-three amendments were adopted in Louisiana, eighteen in California, twelve in Michigan, ten in Missouri, and eight each in the states of Colorado, New York, South Carolina, and South Dakota. In 1908 one hundred and one amendments were submitted to a vote of the people in the several states, of which fifteen were voted upon in Louisiana, fourteen in California, ten in Oregon, and eight in Missouri.⁴

Because of the great mass of detail now introduced into most of our state constitutions and of the fact that they contain much matter of private law, frequent amendments have become necessary in order to adjust constitutional provisions to changing conditions.⁵ The tendency to embody statutory matter in state constitutions continues, and the furthest point yet reached in this development is represented by the new constitution of Oklahoma. The adoption of new constitutions and the process of constitutional amendment have become active organs of legislation superior to the ordinary state legislatures.⁶ Extreme cases may easily be cited of provisions being inserted in constitutions which might much better have been left to state legislation; such, for example, as the provision of the Oklahoma constitution which prescribes the tests to be applied to determine the purity of kerosene oil, and a North Dakota amendment of 1904 changing the name of the state school for the deaf and dumb. It should be said, however, that the constitution recently adopted by the state of Michigan is an exception to the general tendency in that it confines itself rather closely to matters which may properly be termed constitutional.

For many years the processes of constitutional amendment have been growing simpler and easier. The increased complexity of constitutions makes frequent amendment necessary, and is forcing the

⁴ Information regarding the final action of the people upon all of these amendments has not yet been received. All of the fifteen amendments voted upon in Louisiana were adopted by the people.

⁵ As, for example, the constitutional amendments and provisions made necessary in order to permit the use of voting machines, in Pennsylvania, 1901; California and Virginia, 1902; Connecticut, 1905; and Colorado, 1908. See the cases of *Nichols v. Election Commissioners*, 196 Mass. 410; and *Helme v. Election Commissioners*, 149 Mich. 390.

⁶ Dealey, J. Q. *General Tendencies in State Constitutions*, American Political Science Review, I, 200.

simplification of the amending procedure. The amendment of state constitutions may now be accomplished with little difficulty in most of the states, although the amending procedure is still extremely cumbersome in some states, as, for example, in New Hampshire and Illinois.⁷

The tendency to make constitutional amendment easier has continued during the past eight years. A number of states require that constitutional amendments to be adopted shall receive a majority of all votes cast in the election at which they are submitted to the people. This provision makes amendment difficult because, even on questions of great popular interest, it is impossible to get all persons voting at an election to express themselves upon proposed constitutional amendments; amendments are thus often defeated because they have not received a majority of all votes cast at an election, even though a large majority of those voting on an amendment may have favored its adoption. In the attempt to obviate this difficulty Nebraska in 1901 and Ohio in 1902 provided by law that if a political party should declare itself in favor of a constitutional amendment, a straight vote for the ticket of that party should be counted as a vote for such amendment; the Ohio law was, however, repealed in 1908. Alabama by its constitution of 1901 provides that a majority of those voting on an amendment shall be sufficient for its adoption, substituting this plan for the more cumbersome one of requiring a majority of all votes cast in the election at which an amendment is submitted.⁸ Alabama has also made amendment easier by reducing from two-thirds to three-fifths the legislative majority required for the proposal of constitutional amendments. The state of Maine by an amendment of 1908 has shortened the time required for the adoption of an amendment, by requiring that an amendment proposed by the legislature shall be submitted to the people on the second Monday in September following its passage, whereas formerly amendments would not have been voted on by the people until the next biennial election. The Oklahoma constitution of 1907, in its provision for amendment upon the initiative of the legislature, provides for the proposal of

⁷ Garner, J. W. *Amendment of State Constitutions*, American Political Science Review, I, 213. The present provisions regarding state constitutional amendment are summarized in Stimson's *Law of Federal and State Constitutions*, pp. 355-357.

⁸ A proposed amendment in Mississippi attempting to accomplish the same purpose was defeated in 1902.

amendments by a majority of all members elected to each of the two houses, but adopts the somewhat cumbersome requirement that amendments shall receive a majority of all votes cast in the election at which they are submitted to the people.

Virginia in its new constitution of 1902 repeats from the constitution of 1869 the requirement that constitutional amendments be adopted by two successive legislatures before being submitted to the people. Oregon, however, in 1906 abandoned this mode of procedure, and now provides for the legislature's proposal of amendments simply upon the agreement of a majority of all members elected to each of the two houses.

The Michigan constitution of 1908 has taken an important step toward obtaining facility in constitutional amendment by providing, in addition to the power of the legislature to propose amendments, that amendments may be proposed by petition of 20 per cent of the total number of electors voting for the secretary of state at the preceding election. An amendment thus proposed by initiative petition must be submitted to a vote of the people unless the legislature in a joint convention of the two houses disapproves of the proposed amendment by a majority vote of all of its elected members. The real effect of this provision will probably be that all amendments petitioned for will be submitted to the people.

The distinction in *substance* between state constitutions and state statutes has almost entirely disappeared through the practice of embodying detailed legislative enactments in the constitutions. There now seems to be a tendency at least in the Western States to break down the *formal* distinction between constitutions and statutes, by using the same methods for the enactment of state laws and for the adoption of constitutional amendments.

Virginia and Oklahoma have made important provisions of their constitutions subject to amendment by legislative act.⁹ But the real distinction in form of enactment between constitutions and statutes is disappearing largely through the adoption of the initiative and referendum. The initiative and referendum amendments of Oregon, 1902 and 1906, and of Missouri, 1908, permit the adoption of constitutional amendments and of statutes in precisely the same manner. Both

⁹ Virginia, secs. 155, 156 1. Oklahoma, Art. IX, sec. 35; Art. XII, sec. 3; Art. XX, sec. 2. See the suggestion made by Dr. Whitten in New York State Library, *Review of Legislation*, 1901, p. 29.

amendments and statutes may be proposed by initiative petition and adopted by a vote of the people, independent of the legislative bodies. The amendment now pending for the purpose of introducing the initiative and referendum in North Dakota contains provisions of the same character. The Oklahoma initiative and referendum provision makes no distinction between constitutional amendments and statutes except that a petition of 15 per cent of the legal voters is required to initiate a constitutional amendment while only 8 per cent is required to propose measures of ordinary legislation.¹⁰ Under the provisions here referred to, it would seem that, except for the difference in the number of petitioners in Oklahoma, a measure may be called either a constitutional amendment or a law, at the discretion of those who propose it. Montana in its amendment of 1906 and Maine in its amendment of 1908 expressly provide that the popular initiative shall not apply to constitutional amendments, and thus leave to the legislature alone the initiation of amendments.

Heretofore the really fundamental distinction between statutes and constitutional amendments has been that amendments were required to be voted on by the people, while statutes were infrequently submitted to a popular referendum. Constitutional legislation thus involved a greater participation upon the part of the people than did statutory legislation. Oregon, Missouri, and Oklahoma now place constitutional legislation and the adoption of ordinary statutes upon practically the same level as far as the popular share in their enactment is concerned. Maine and Montana by withholding the initiative on constitutional amendments give less popular participation in the amendment of their constitutions than they do in the enactment of ordinary legislation; and they make the submission of amendments more difficult than that of laws by requiring a two-thirds vote of the legislature for the proposal of amendments to a vote of the people. Nevada, by its referendum amendment of 1904, makes it possible for laws to be submitted to a popular vote just as are constitutional amendments; but the amendment of the constitution is made more difficult than ordinary legislation by the requirement that amendments be adopted by two successive legislatures before being submitted to the people. By its initiative petition Michigan gives the

¹⁰ The rejected Missouri amendment of 1904 made a similar distinction between constitutional amendments and laws, by requiring a larger popular petition for the proposal of amendments.

people a greater share in constitutional legislation than in the enactment of ordinary laws, inasmuch as no popular initiative exists in that state for laws, and also in that the referendum on constitutional amendments is compulsory while that on ordinary legislation is optional with the legislature. On the whole, however, the adoption of the initiative and referendum is breaking down distinctions heretofore made between the processes of legislation and of constitutional amendment.

The first constitutional provision for the initiative and referendum with reference to state laws was that adopted by South Dakota in 1898; Utah followed in 1900 with a constitutional amendment intended to obtain the initiative and referendum upon state laws, but the Utah amendment was not self-executing, and the legislature of that state has never enacted legislation to carry its provisions into effect. Since 1900 the movement for the initiative and referendum has grown rapidly. Oregon by its amendments of 1902 and 1906 has provided for the enactment of laws and constitutional amendments by the people without the participation of the legislature, and has also made provision for a compulsory referendum upon laws or upon parts of any laws enacted by the legislature. Nevada in 1904 established a compulsory referendum upon state laws, but did not adopt the initiative. Montana in 1906 adopted the initiative and referendum for state laws. Oklahoma in 1907 adopted the initiative and referendum for state laws and constitutional amendments, applying the referendum also with reference to sections, items, or parts of any act of the legislature. The greatest gains for the initiative and referendum have been made in 1908. During this year Maine has adopted the initiative and referendum for laws; Michigan has adopted the initiative for constitutional amendments and the referendum upon state laws, the use of the latter however not being compulsory upon popular petition, it being left entirely to the legislative discretion as to whether a law shall be submitted to the people for approval. Missouri has adopted the initiative and referendum with reference both to laws and to constitutional amendments. Until recently this movement has been confined to the states of the further west, but the most significant thing in the development of the present year has been the adoption of these more popular forms of government in Maine, Michigan and Missouri.¹¹

¹¹ Reference may also be made to the constitutional amendment now pending in North Dakota. The development of the initiative and referendum in the

The movement toward more direct participation by the people in state government has not been confined to the initiative and referendum. Oregon in 1908 provided for the recall of all state and local officers upon petition and after an election, and thus puts public officials at all times subject to the will of the people. In 1908 also a constitutional amendment was adopted in Oregon permitting the legislature to establish proportional representation. Oklahoma in 1907 required its legislature to enact a law providing for a mandatory primary election system for the nomination of all candidates for state and local offices. California in 1908 adopted a similar constitutional provision requiring its legislature to enact a primary election law, but left it to the discretion of the legislature as to whether such a law should be made mandatory.

The movement toward more popular participation in government is evident in local as well as in state affairs. California in 1902 and 1906, and Missouri in 1902 extended their constitutional provisions by which cities are permitted to make, revise, and amend their own charters. California in 1906 adopted a constitutional amendment permitting cities to control the tenure of their officials, this amendment having been adopted in order to remove any doubt as to the power of cities to establish the recall with reference to municipal officials. In 1902 Colorado by a constitutional amendment authorized cities having more than two thousand inhabitants to make, revise, and amend their own charters. Oregon in 1906 gave the municipalities of that state power to enact and amend their charters, subject to the constitution and criminal laws of the state. An amendment to the Illinois constitution in 1904 empowered the legislature of that state to enact special laws to reorganize the government of the city of Chicago, but provided that laws so enacted should not go into effect until after they had been submitted to and adopted by the people of Chicago. Oklahoma in 1907 permitted cities having a population of more than two thousand inhabitants to frame and alter

states is not all represented by constitutional provisions. Illinois in 1901 adopted by statute an advisory referendum applicable both to the state and to municipal corporations. A popular vote in Delaware in 1906 decided in favor of the establishment of an advisory initiative and referendum. See Schafner, Margaret A.: *The Initiative, the Referendum, and the Recall*, American Political Science Review, II, 32; *Popular Legislation in the United States. The Development of the System*, by C. S. Lobingier. *The Value of the System*, by J. B. Sanborn. Political Science Quarterly, XXIII, 577, 587.

their own charters. The new Michigan constitution gives cities and villages power to frame, adopt, and amend their charters, under general laws to be enacted by the legislature.¹²

Some progress has also been made in the introduction of the initiative and referendum with respect to municipal questions. Colorado in 1902 required cities framing their own charters to place therein provision for the initiative and referendum upon measures passed by their city councils. Oregon in 1906 applied the initiative and referendum to "all local, special, and municipal legislation of every character," but permitted cities and towns to determine the manner in which the initiative and referendum should be exercised with reference to their municipal legislation. The Oklahoma constitution of 1907 extends the initiative and referendum to counties, districts, and municipal corporations; and Maine by its amendment of 1908 permits cities to adopt the initiative and referendum. The constitutional amendments adopted during this period do not show the full development of popular control in municipal affairs, inasmuch as the initiative, referendum, and recall have in other cases been made applicable to cities either by state statute or by charters framed by the cities themselves.¹³

In discussing the movement for municipal home rule it should also be mentioned that the restrictions placed upon local and special legislation by the new constitutions of Alabama, Virginia, Oklahoma, and Michigan practically prevent special state legislation for particular cities, and thus necessarily give to the cities greater freedom in the management of their local affairs. With reference to the granting of franchises the new constitutions confer additional power upon municipal corporations, but also impose wise restrictions upon the use of such power. Alabama gives its cities absolute control over the use of their streets for public utilities or private enterprises, but forbids any town or city having more than six thousand inhabitants to grant a franchise for a longer term than thirty years. The Virginia constitution contains similar provisions, but requires in addition that municipal franchises be sold only after proper public advertisement,

¹² For a further discussion of this subject see Oberholtzer, *Home Rule for our American Cities*, Annals of the American Academy of Political and Social Science, III, 736; and the same author's *Referendum in America*, Chapter XIV. See also Maltbie, *City-made Charters*, Yale Review, XIII, 380.

¹³ For an account of the municipal referendum before 1900, see Oberholtzer, *Referendum in America*, 306-310.

and that an ordinance for such a purpose be passed by an affirmative vote of three-fourths of all members elected to the city council. Oklahoma permits its cities to engage in the business of supplying public utilities, limits franchises to a term of twenty-five years, and provides that they shall not be granted, extended, or renewed without the approval of the qualified electors. Michigan permits its cities and villages to acquire, own, and operate their public utilities; but cities and villages are forbidden to grant any franchise not revocable at will or to acquire any public utility unless such action is first approved by an affirmative vote of three-fifths of the electors of such city or village; franchises may not be granted for a longer term than twenty years. Colorado by an amendment of 1902 forbids a city to grant franchises except by a vote of its taxpaying electors.

In the state governments there has been a continued development toward the increase of the governor's power and the diminution of the power of the state legislature. Although the state executive power is badly disintegrated there would seem to be a slight tendency to increase the governor's administrative authority, both by statute and by constitutional provisions. The Virginia constitution of 1902 authorizes the governor to suspend executive officers of the state during the recess of the general assembly, the general assembly itself to decide at its next meeting whether the suspended officer shall be restored or removed. The governor of Oklahoma is given power to require information in writing under oath from all officers and commissioners of the state and from all officers of state institutions. By the Alabama constitution of 1901 and by the Michigan constitution of 1908 the governors are given increased power to require information in writing from the executive and administrative officers of these states.

But it is with reference to legislation that the increase of the governor's power is most apparent. Ohio by an amendment of 1903 conferred the veto power upon her governor, leaving only two states—Rhode Island and North Carolina—which have no form of executive veto upon state legislation. Virginia in 1902, Ohio in 1903, Kansas in 1904, Oklahoma in 1907, and Michigan in 1908, have conferred upon their governors the additional power to veto separate items in appropriation bills; there are now thirty-three states which confer this power upon their governors.¹⁴ With reference to the making of

¹⁴ Alabama, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missis-

appropriations Alabama also increases still further the executive power by authorizing the governor, auditor, and attorney-general of that state to prepare a general revenue bill, before each regular session of the legislature, to be submitted to the legislature for its information.

Ohio by amendment of 1903 confers upon its governor power to veto any section or sections of a bill presented to him and to approve other portions of the bill so presented, following in this respect the Washington constitution of 1889. The Alabama constitution of 1901 permits the governor to propose an amendment to remedy any feature of a bill which he does not approve, and if his proposed amendment is not adopted by the two houses, the bill to become law must be passed over the executive veto. The Virginia constitution of 1902 also gives the governor power to recommend the amendment of a bill if he approves its general purpose but disapproves any part thereof, and in this state the bill if amended by the two houses or if they fail to amend it in accordance with the governor's recommendation, is again returned to the governor for his approval or disapproval.

Although the state governors in no case possess more than a limited veto, subject to be overcome by subsequent legislative action, it should nevertheless be borne in mind that appropriation bills and other important acts are usually passed during the last days of legislative sessions when repassage over executive disapproval is practically impossible; the governor thus in many instances exercises what is equivalent to an absolute veto. A constitutional amendment adopted by California in 1908 increases from ten to thirty days the time within which the governor may approve bills after the adjournment of the legislature, and is clearly intended to give him more time to consider legislation which must fail unless he does approve it. Wisconsin in 1908 increased from three to six days the time within which the governor must disapprove a measure in order to prevent its enactment, evidently for the purpose of giving him more time to consider legislation. The constitutional provisions extending the veto power have, it would seem, the very definite purpose of placing

sippi, Missouri, Montana, Nebraska, New Jersey, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, Wyoming. See bulletin no. 1 of the Rhode Island Legislative Reference Bureau on *The Veto Power in the Several States* (Providence, 1907).

upon state governors a larger share of the responsibility for state legislative activities.

The introduction of the initiative and referendum for state laws will, however, weaken the governor's power over legislation. The constitutional provisions of South Dakota, Oregon, Montana, Oklahoma, and Missouri, and the proposed amendment in North Dakota, expressly provide that the veto power of the governor shall not extend to measures referred to a vote of the people; in Maine definite provision is made by which the governor's veto of measures initiated by petition may be overcome by the use of the referendum. The referendum in Maine, Oregon and Oklahoma, and the proposed referendum in North Dakota extend to sections or to parts of bills as well as to entire measures, and thus give to the people a revisory power over state legislation broader than that conferred upon the governors in any states except Washington and Ohio.¹⁵ Nevada by its amendment for the compulsory referendum, and Michigan in introducing the optional referendum apply the referenda only to laws enacted by the regular legislative organs of these states, and thus preserve the governor's influence over legislation.

The first state constitutions conferred almost the whole power of government upon the legislatures, but since the end of the American Revolution there has been a fairly constant movement away from legislative supremacy in the states. The distrust of legislatures has been to a large extent responsible for the extension of the powers of the other departments of government, and for the numerous specific limitations which have been placed upon the exercise of the legislative power. The diminution of legislative power has been brought about (1) by the assumption of legislative functions by constitutional conventions, and by the adoption of legislation through constitutional amendment; (2) by the extension of popular legislation through the adoption of the initiative, referendum, and recall; these institutions will almost necessarily reduce the already slight responsibility of state legislatures; (3) by the extension of the governor's share in legislation, so that a large part of the responsibility may be fixed upon him for legislation that is enacted; (4) by the imposition of positive restrictions upon the power of the legislature,

¹⁵ The referendum in these states, and in South Dakota, Montana and Missouri, however, does not apply to "laws necessary for the immediate preservation of the public peace, health, or safety."

by the granting to cities of control over their own governmental affairs, and by making legislative sessions less and less frequent.

Mississippi in 1890 took the first step toward quadrennial sessions by providing for one regular session of the legislature every four years, and for a special session in the interval between regular sessions, so as to make the sessions biennial, but with a definite limitation as to the subjects to be considered at the special session and as to its duration. Alabama in 1901 provided specifically for quadrennial sessions, and is the first state to provide that its legislature shall meet at such infrequent intervals. In 1902 a proposed constitutional amendment for regular biennial sessions was defeated in Mississippi; and in 1908 a proposed amendment for a return to biennial sessions was defeated in Alabama. The movement for less frequent legislative sessions will hardly turn backward, and the need for frequent sessions is disappearing with the enactment of ordinary legislation by constitutional amendment and revision, and with the adoption of the initiative and referendum as in Oregon where laws may be enacted without the participation of the legislature.

The restrictions upon local and special legislation have been brought about to a large extent by the abuse of legislative power, and will probably prove an advantage to the legislatures themselves by confining their attention to general measures, whereas legislatures have in the past devoted a large part of their time to local problems which might much better have been left to the local governments. Alabama, Virginia, and Oklahoma specify in detail a number of subjects upon which local, special, and private legislation may not be enacted; and such special legislation as may be enacted is subject to rules of procedure intended to prevent abuse. Special acts for the incorporation of cities have been forbidden in Alabama, Oklahoma, and Michigan. Virginia permits special legislation relating to the organization of cities and towns by a vote of two-thirds of all members elected to each house of the legislature.¹⁸

The Virginia constitution, besides forbidding special legislation upon a number of specified subjects, also requires that in other cases general laws be enacted whenever they may be made applicable, but expressly leaves it to the legislative discretion as to when special laws

¹⁸ A constitutional amendment rejected by Florida in 1904 proposed a great reduction in the power of the legislature of that state to enact local and special laws.

are needed, and is therefore not really a limitation upon legislative power. Oklahoma has a provision similar to that of Virginia, but does not expressly provide that the legislature shall have discretion to determine whether to act by special or general law. Alabama forbids the enactment of a special, private, or local law in any case already provided for by a general law, and makes the determination of this matter a judicial rather than a legislative question. The constitutional provision that "in all cases where a general law can be made applicable no special law shall be enacted" was held in Kansas to mean that the legislature was vested with discretion to determine when a general law could not be made applicable; it thus rested with the good faith of the legislature as to whether this constitutional provision should be observed;¹⁷ an amendment to the Kansas constitution in 1906 leaves to the courts the question whether a general law may be made applicable. The Michigan constitution of 1908 does not enumerate in detail the subjects upon which special laws may not be passed, but provides that the legislature shall pass no local or special act where a general act may be made applicable, and the question whether a general act could have been made applicable is made a question not for the legislative determination but for the decision of the courts. In Michigan local and special acts do not take effect until after they have been approved by a majority of the electors voting thereon in the district to be affected by such acts.

The new constitutions of Alabama, Virginia, Oklahoma, and Michigan, forbid the granting of charters to private corporations by special acts, and require that corporations be organized under general laws. Each of these four constitutions contains rather full provisions regarding corporations, more especially with reference to public service corporations. Oklahoma has gone further than any other state in the regulation of corporations by constitutional enactment, and has embodied in its constitution an elaborate code of corporation law, relating more particularly to public service corporations. Alabama authorizes its legislature to fix railroad rates. Michigan, whose former constitution granted the legislature power to fix railroad

¹⁷ This is the more general judicial position upon constitutional provisions of this character. Under such a holding the Oklahoma provision mentioned above would be given precisely the same effect as the provision in the Virginia constitution. Cooley, *Constitutional Limitations*, 181, note 4. Indiana *v.* Kolsen, 14 L. R. A. 566. American Digest, Century Edition, X, 1425; American Digest, Decennial edition, IV, 1623.

rates, now extends this power to express rates also, and permits the creation of a commission to regulate railway and express rates. Virginia transfers control over private corporations and over rates of public service corporations to a state corporation commission; this commission is required to proceed judicially in the fixing of rates, and from its decisions public service corporations have an appeal to the highest state court. Oklahoma has by its constitution established a corporation commission, modeled in large part upon that of Virginia. Louisiana, whose constitution of 1898 established a corporation commission similar to that of Virginia, in 1908 adopted constitutional amendments to prevent foreign corporations from bringing suit in the federal courts, and to penalize corporations contesting before the courts the rates which may have been fixed by the commission.¹⁸ Nebraska in 1906 by a constitutional amendment created a state railway commission with power to regulate the rates and services of common carriers.

Attention may be briefly called to several other movements discernible in recent constitutional development. In the Southern

¹⁸ These amendments will probably be held to be invalid when contested in the federal courts. The Louisiana, Virginia, and Oklahoma provisions for rate-making by judicial procedure were evidently intended to prevent the issuance of injunctions by inferior federal courts restraining the enforcement of rates after they had been made, inasmuch as by federal law writs of injunction may not be granted by any court of the United States to stay proceedings in any court of a state. The purpose of these state constitutional provisions has, however, been nullified by the Supreme Court of the United States in the case of *State Corporation Commission of Virginia v. Railroads*, decided November 30, 1908; in this case the Supreme Court held that rate-making is a legislative and not a judicial function, that judicial bodies in fixing rates are acting in a legislative capacity, and that an injunction may therefore be issued by the federal courts to prevent the enforcement of rates so fixed. This decision seems to warrant the statement that the states cannot devise any effective system of rate-making for intrastate traffic, for if rates are in every case subject to be enjoined by the inferior federal courts, a state rate will, even if finally upheld by the federal courts, not go into effect until after long judicial proceedings in each case. This is in effect to say that the states, although they are the only bodies having control over intrastate rates, will not be permitted to exercise their power of control except in the cases where they may do so in agreement with the railroads affected. It would seem that the Supreme Court might better have taken the view that injunctions should not issue by federal courts where private rights are properly secured by judicial proceedings in rate-making by the states, assuming that the corporation if it felt aggrieved would exercise its right of appeal from the highest state court to the Supreme Court of the United States.

States rapid progress continues to be made in the disfranchisement of the ignorant colored population; suffrage limitations were adopted by Alabama in 1901, Virginia in 1902, Georgia in 1908, and there is now pending in Maryland an amendment having the same object in view.¹⁹ The movement for the restriction of the suffrage has not, however, been confined entirely to the South. New Hampshire in 1903 adopted a constitutional amendment requiring that voters and office-holders be able to read the constitution in English and to write. Colorado in 1902 limited the suffrage to citizens of the United States, and thus withdrew this privilege from foreigners who had declared their intention of becoming citizens. Wisconsin in 1908 adopted an amendment limiting the suffrage after 1912 to citizens of the United States.

The movement to give the state governments greater power with reference to the improvement of highways continues, and in this respect there is a tendency to confer upon the legislatures power once taken away from them as a result of disastrous experiences in state conduct of or aid to internal improvements. California in 1902 gave its legislature power to establish and maintain state highways, and Michigan by a constitutional amendment of 1905 permits the state to improve or to aid in the improvement of wagon roads. An amendment adopted by New York in 1905 permits that state to contract a debt of fifty million dollars for the improvement of highways. By a constitutional amendment of 1908 Wisconsin is authorized to appropriate money for the construction or improvement of public highways. Missouri by amendments of 1906 and 1908 permits its counties and towns to levy taxes and to contract debts for the improvement of roads and bridges. An amendment adopted by Illinois in 1908 permits the legislature of that state to provide for the construction of a deep waterway connecting Chicago with the Mississippi river, at an expense not to exceed twenty million dollars.

In concluding the discussion of state constitutional development during the past eight years, the most important tendencies may be summarized as follows: (1) The disappearance of the distinction in form of enactment between statutes and constitutional amendments in the states which have adopted the initiative and referendum. (2) The increase of popular control over state legislation through the spread of the initiative and referendum, and through the enactment of statutory matter by constitutional amendment. (3) The increase of

¹⁹ A proposed amendment for this purpose was defeated in Maryland in 1905.

popular control in towns and cities through the granting to cities of power to frame their own charters, and through restrictions placed upon state legislatures as to local and special legislation; and through the introduction of the local initiative, referendum, and recall. (4) The slight increase in the power of the governor over the state administration, and the great increase of the governor's power over legislation. (5) The continued diminution of the power of state legislatures, through the adoption of methods of popular legislation, through express prohibitions upon legislatures with reference to special and local legislation, and through the increased power granted to the governor over legislation. (6) The efforts to subject public service corporations to more adequate control.*

* During recent years there have been numerous amendments proposed with reference to state and municipal taxation. See a note on *Taxation—Pending Constitutional Revisions and Amendments*, by Robert Argyll Campbell in American Political Science Review, II, 427.

RECENT CONSTITUTIONAL CHANGES IN NEW ENGLAND

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By reason of their age, their brevity, their rigidity, and their retention of certain archaic features, the six New England constitutions form a distinct class among our State constitutions. Three were drafted in the eighteenth century and the latest only in 1842. All are little more than bare frames of government, prefaced by declarations of rights. Rhode Island enjoys the distinction of possessing the shortest of State constitutions. All fall far below the average length, and they present an almost startling contrast to the bulky new constitution of Oklahoma. At a time when the legislature and the convention are being more frequently employed for the framing of fundamental laws, the process of amending five of the New England constitutions continues to be peculiarly difficult and slow. Maine interposes fewest obstacles to amendments in the organic law. Two-thirds of both chambers of the Maine legislature may propose amendments; a simple majority of those voting on the referendum suffices to adopt them. In all the other States except New Hampshire, an amendment must pass two successive legislatures—by majorities which vary from State to State—before it may be submitted to the electors for ratification. The New Hampshire constitution requires the sense of the voters to be taken every seven years as to the necessity of revising the organic law. If a majority of the electors voting favor revision, the general court must call a convention for that purpose. New Hampshire requires the excessive majority of two-thirds on the referendum, and Rhode Island three-fifths, for the adoption of any amendment. Elsewhere a simple majority of those voting suffices.

It is evident that frequent changes were not contemplated by those who drafted the organic laws of New England. The exercise of the

¹Professor Dealey gives the average length as 15,500 words. Cf. "Our State Constitutions," pp. 1, 83.

law-making power was subjected to few restrictions. Contingencies which would necessitate a re-shaping of the organs of government and a re-adjustment of their relations were not anticipated. The difficulty of amending these New England constitutions, coupled with what I shall for the present term vaguely "New England conservatism," accounts for the retention of many outworn provisions on the one hand and the absence of much-needed reforms on the other.

To enumerate the recent constitutional changes in New England, therefore, is no very arduous task. Vermont has not amended its constitution since 1883. Massachusetts has adopted one amendment only within the last fourteen years; viz: that of 1907, which gives the governor power to remove from office notaries public and justices of the peace. New Hampshire has held but one convention since 1889. In 1903, the following four amendments were ratified by the requisite two-thirds majority: 1st. The right to vote and to hold office was restricted to persons who can read the constitution in the English language and who can write. This provision was not to apply to persons already having the right to vote nor to persons sixty or more years of age. New Hampshire simply followed the example which Massachusetts set as long ago as 1857 and which Maine followed in 1893. Connecticut made ability to read a qualification for suffrage by an amendment in 1897. 2d. Candidates for nomination to office in the militia of New Hampshire must now qualify before an examining board before being recommended to the governor by the field officers. 3d. The right to tax franchises and property when passing by will or inheritance was specifically added to the power of the general court to assess public charges on polls and estates. 4th. All just power possessed by the State was granted to the general court to enact laws to prevent monopolies and illegal combinations which destroy free and fair trade, to control and regulate trusts and corporations doing business within the State, and to prevent fictitious capitalization.

Two amending articles have been added to the constitution of Rhode Island within the last fifteen years. Article XI, adopted in 1900, provided for an annual session of the legislature at Providence, and increased the per diem allowance of members of the legislature from one to five dollars, on condition that no compensation or mileage should be allowed for more than sixty days' attendance in any calendar year. Provision was also made in this article for changing State elections from April to November, and for filling vacancies

in State offices which should occur through death, temporary incapacity, failure to elect, or other cause. Article XII, adopted in 1903, bestowed upon the Supreme Court, in specific language, final revisory and appellate jurisdiction upon all questions of law and equity, and the power to issue prerogative writs. The original provision of the constitution gave to the Supreme Court such jurisdiction as might from time to time be prescribed by law. Of the pending amendment to the constitution of Rhode Island, I shall speak in another connection.

Connecticut has added four amendments to her constitution within the last ten years. A much-needed article adopted in 1901 substituted plurality elections for majority elections in the case of State officers chosen by popular vote, thus preventing the legislature from defeating candidates who are the obvious choice of the people, as happened in four out of ten elections by the legislature within the previous twenty years.² Another amendment of the same year (1901) provided for an increase in the number of Senatorial districts. An amendment of 1828 had provided for not less than eight nor more than twenty-four districts, without specifying the number of Senators to be elected from each, though stipulating that each county should have at least two senators. The amendment of 1901 provides for a senate of not less than eighteen nor more than twenty-four members, one from each district, and at least one from each county. Two amendments of the year 1905 are of less importance: one permits towns to elect local officers annually or biennially, as they may choose; another permits the use of voting machines so long as the right of secret voting is preserved.

Finally, Maine has just amended her constitution for the first time in twelve years. An amendment of the current year establishes what is termed "a people's veto through the optional referendum, and a direct initiative by petition." No act or joint resolution of the legislature is to take effect until ninety days after adjournment, except in cases of emergency, when by a two-thirds vote of all the members elected to each house the legislature may otherwise direct. An emergency bill is defined as a measure immediately necessary for the preservation of the public peace, health, or safety; it must not include an infringement of the right of home rule for municipalities, nor a franchise for a longer term than one year, nor a provision for

²Cf. article by G. S. Ford in *Municipal Affairs*, Vol. VI, on the "Rural Domination of Cities in Connecticut."

the sale, purchase, or renting of real estate for more than five years. Upon petition of 10,000 electors filed with the Secretary of State within ninety days after the adjournment of the legislature, the governor must submit the designated bill or designated part of a bill, to a popular vote, either at the next general election or at a special election. A bill, resolve, or resolution may be initiated upon petition of 12,000 voters. Unless enacted by the legislature, this measure must be submitted to the electors, together with any competing bill which the legislature may devise. In these instances the governor's veto power extends only to an initiative measure which has been passed by the legislature. Should his veto be sustained by the legislature, the measure must be submitted to the referendum. Proper safeguards are provided for the genuineness of the signatures to a petition. Petitions must contain the full text of the measures requested or proposed, but the Secretary of State is to prepare the ballots so "as to present the question or questions concisely and intelligibly." Measures initiated by petition may include bills to amend or repeal emergency legislation. The amendment also permits municipalities to establish the initiative and referendum on local ordinances.

All proposals to give the electors the right to initiate amendments to the constitution were defeated in the legislature, largely because, so it is said, the advocates of prohibition of the liquor traffic were unwilling to expose the prohibitory amendment now in the constitution to the hazards of a popular vote. Yet both parties finally united in submitting the recently adopted amendment to the people. There was almost no public discussion of the proposed innovation. The press, with a few notable exceptions, ignored the matter. The most aggressive work in behalf of the initiative and referendum was conducted by the Maine Referendum League, strongly supported by the trade-unions and the State Grange. The adoption of the amendment, however, was due quite as much to the indifference of the great body of voters. The total vote fell short of the gubernatorial vote by about forty per cent. In a conservative community like Brunswick, the amendment was adopted by a vote of 472 to 29 in a total poll which was less than one half of the vote cast at the same time for governor. A study of the vote by counties, sections, and towns reveals much the same indifference. All the sixteen counties, and all but two of the cities and towns of more than 4,000 inhabitants, were carried for the amendment. There is no observable sectional diver-

gence in the vote, as between coast and interior, for example, or between old and new towns. Wells and York, two of the oldest towns in the State, which possess about the same sort and number of inhabitants, voted, the one for and the other against the amendment, by almost precisely the same majorities.

In stating thus somewhat perfunctorily the positive changes in the constitutions of New England, I am well aware that I have told but half of the recent constitutional history of at least three of these States. The unsuccessful attempts at amendment and revision are not the least interesting and instructive aspects of the subject. I have already said that the framers of the New England constitutions did not contemplate frequent changes in them. Why should they have done so? Their New England was singularly homogeneous; the chief occupations were still agriculture and commerce; manufacturing was in its infancy; there were no dominating urban centers. When the latest of the constitutions was drawn (that of Rhode Island) Providence, the second city in New England, had less than 24,000 inhabitants. New England was still rural; the characteristic group settlement was the small town. It was natural, then, that the constitutions should make large use of the town as the basis of administration and government; and it was just as inevitable that by way of reaction against their colonial experience, they should have concentrated large powers in the legislature, whose representation was for the most part based upon the town as a unit. Hence that lamentable maladjustment of representation to population which has come about in at least three of the States of the New England of our day. I invite your attention first to the abortive constitutional convention of 1902 in Connecticut.

When the constitution of 1818 was drafted, Connecticut was still largely an agricultural community, whose life centered in the historic small towns. Local pride, fortified by the natural conservatism of agricultural communities, led to the perpetuation of the system of representation in the legislature which had begun with the Fundamental Orders of 1639, viz: a system based upon the federation of towns. The towns were equally represented in the House of Representatives, while the Senate was composed of members elected by general ticket for the whole State. Subsequent amendments provided for the election of Senators by districts, as we have seen; and gave to each town of five thousand inhabitants two representatives in the House, but no new town was to have a representative unless

it had twenty-five hundred inhabitants, though old towns of less than five thousand were to keep their existing representation, regardless of their population. This would seem not to have been an inequitable apportionment at the time, since the average population of the 122 towns was 2,300 and only nine exceeded 4,000.³

In the following decades, Connecticut passed through an industrial revolution which made the town system of representation, based on agricultural conditions, archaic and irrational. Large manufacturing cities came into existence which politically were still classed as small towns. New Haven, the largest city, with a population of 108,027, shares with Union, the smallest town, with a population of 428, the privilege of sending two representatives to the House.⁴ Eleven large manufacturing cities with one-half the entire population of the State have but twenty-two votes in a House of 255 representatives. A majority of the members of the House represent towns containing only one-ninth of the population of the State. This discrepancy is all the more marked by reason of the fact that fifty-three of the 168 towns showed a loss of population in the decade 1890-1900, and of these 53 all but two had less than 3,000 inhabitants. The absolute increase of population for the whole State in the same decade was 162,162, of which the eleven largest cities furnished about three-fourths.

The Constitutional Convention of 1902 was summoned in full view of these glaring inequalities. Yet 127 out of the 168 towns voted against the convention and only the vote of the large cities carried the day. It had been determined that each town should send one member to the convention, so that the assembled convention could muster only forty delegates whose constituents had voted for the convention. Not to dwell upon the obvious fact that the small towns controlled the convention, I will simply recall to your minds the final proposition relating to the apportionment question. It was a hastily-drawn and unsatisfactory compromise to the effect that each town of less than two thousand inhabitants should have one representative; each of two thousand and less than fifty thousand should have two representatives; each town of fifty thousand and less than one hundred thousand should have three; each town of one hundred thousand should have four and an additional representative for

³ Cf. *Municipal Affairs*. Vol. VI, p. 222.

⁴ These figures are taken from the Census Returns of 1900.

every fifty thousand in excess. The Senate was to be increased to forty-five members. The revised constitution was submitted to the people only to be emphatically defeated by a vote of nearly three to one.⁵ The hope then expressed, six years ago, that what a constitutional convention had not been able to effect would be accomplished piecemeal, by successive amendments, has not been realized. Connecticut is still unreformed.

A similar reluctance to apportion representation on the basis of population is manifest in New Hampshire, though the maladjustment is less grievous. Besides the four amendments to which I have already alluded, the convention of 1902 submitted six others to popular vote,⁶ one of which contemplated a readjustment of representation in the House of Representatives. No change in the Senate was proposed, though it may be remarked in passing that the method of apportionment in that chamber is unique. The twenty-four members are apportioned among twenty-four districts which must be "as nearly equal as may be"—to quote the constitution—in respect to "the proportion of direct taxes paid by the said districts." The unit of representation in the House is the town or city ward of six hundred inhabitants. A population of eighteen hundred entitles the town or ward to two representatives, and so on, the mean increasing number for any additional representative being twelve hundred. Places of less than six hundred inhabitants may be authorized by the general court to elect a representative "such proportionate part of the time as the number of its inhabitants shall bear to six hundred." In the year 1901, this apportionment gave the House the very large membership of three hundred and ninety-seven. The system discriminates against the large urban centers and in favor of the one-member constituencies. These small places have one hundred and sixty-eight seats in the House, where an equitable apportionment on the basis of population would give them but one hundred and forty-six. The loss is borne by the forty-one towns or cities having more than one representative in the House.⁷ It is interesting to note

⁵ Cf. an article by Charles H. Clark, a member of the convention, in the *Yale Review*, Vol. XI.

⁶ Among these was a proposition to extend the suffrage to women. It was defeated by a majority of five to three. An amendment to sever the slender ties which still united church and state received a majority of the votes cast on the referendum, but failed to secure the requisite two-thirds for adoption.

⁷ Cf. Dealey's "Our State Constitutions," pp. 79-80.

in this connection that of these one hundred and sixty-eight one-member boroughs, eighty-eight showed a decline in population between 1890 and 1900; yet in the same decade the State as a whole gained. The decrease was in towns of less than three—in most cases, of less than two—thousand, while the eleven manufacturing cities furnished nearly the total increase in population. The only change which the convention of 1902 proposed in this mode of representation was an increase of the qualifying unit from six hundred to eight hundred, and an increase of the mean ratio from twelve to sixteen hundred, with provision for the union of small places to form one-member constituencies. This was a change in degree, not in kind; yet it failed of adoption. A large majority of the electors favored the amendment, but not a two-thirds majority.*

Conditions in Rhode Island are too well understood to need extended description. Suffice it to say that the present system of representation discriminates not only in one chamber but in both, in favor of the small towns as against the urban centers. The senate consists of one member from each town or city. This puts the city of Providence, with nearly two hundred thousand inhabitants, on an equality with a town like Exeter, which numbers less than one thousand souls. In the House, each town or city is entitled to one member, but no town or city may have more than one-sixth of the whole number of members, which is at present fixed at seventy-two. This arrangement gives the city of Providence only twelve, when it should have thirty members; while seventeen towns which fall below the ratio should have four, instead of seventeen, members. Moreover, eleven of these towns decreased in population in the decade before the last census, while the five largest cities, against which such heavy discriminations are made, furnished nearly six-sevenths of the total increase of population for the State.

A pending amendment in Rhode Island holds out some slight prospect of improvement. It is proposed to increase the membership of the House to one hundred and to permit a town or city to have one-fourth instead of one-sixth of the total number. But each town or city is to retain its ancient right of representation, no matter how far its population approximates to zero; and no change in the constitution of the senate is under contemplation. It may be noted in passing that this same pending amendment extends the veto power to the Governor which only a two-thirds vote of each house may override.

* The vote was as follows: Yes, 20,295; No, 13,069.

Of the other New England States, Massachusetts alone apportions representation in both houses on the basis of population; Maine has in general followed the example of the parent State, but discriminates somewhat in favor of the rural towns; Vermont discriminates heavily in favor of the small towns as against the larger urban communities, but no revolt against the system has yet made sufficient headway to appear in the form of a proposed amendment to the constitution. Indeed, the strategic position which representatives of small towns occupy in the legislatures of Vermont, Connecticut, and Rhode Island makes it exceedingly difficult for any thoroughgoing reform of representation to make headway. Nothing short of a self-denying ordinance will initiate amendments in these State legislatures.

The tenacity with which the small towns cling to their ancient right of representation and the obstinacy with which they resist a more equitable apportionment in accord with modern conditions, has been ascribed commonly to New England conservatism, but no one seems to have taken the pains to point out the probable ground for this conservatism. The ultimate reason must be sought, I believe, in phenomena which are social or economic rather than political. It is well known to every student of New England history that its settlement was by groups rather than by individuals. The groups were the product of several forces. Ecclesiastical organization coupled with agrarian interests and environmental conditions, made the town the familiar type of settlement. The early town meetings are hardly to be distinguished from church meetings on the one hand and from proprietors' meetings on the other. In the towns, therefore, there was an interlocking of interests which created a consciousness of social identity and a solidarity of feeling which projected itself far into the eighteenth and even into the nineteenth century. Later the growth of large urban centers as the result of the industrial revolution and the rapid development of the public domain in the West, drew heavily upon the aggressive element in the population of the small towns. Those who were left to till lands which now yielded diminishing returns, grew not less but more tenacious of their traditions. At the same time, the new urban communities began to receive an ever-increasing number of immigrants from foreign lands. In the twelfth census, four of the New England States were numbered among the sixteen States which had the largest percentages of foreign born. All the New England States save Vermont, showed a relative increase of foreign

born persons. This was true of only three other States in the Union. In Massachusetts, New Hampshire, Rhode Island, and Connecticut, the average percentage of foreign born in the cities to the total population of these States was higher than that of any other four States. Moreover, it is well known that the voting strength of the foreign born is proportionally greater than that of the total native stock. One in every two foreign born persons is a potential voter, while only one in every four native born is a voter.*

It would not be strange, then, if the native rural New Englander felt the increasing foreign population in the cities as a menace to his political and economic well-being. If his economic resistance to depression in the social scale is measured, as some think, by the decreasing size of his family, it is possible that his resistance to a more equitable apportionment of representation measures his political distrust of the foreigner in the urban centers. Hence, with the tenacity of his Puritan forefathers, he has entrenched himself in his last political stronghold.

* Cf. Commons, "Races and Immigrants in America," pp. 190-191.

AMENDMENT AND REVISION OF STATE CONSTITUTIONS IN MICHIGAN AND THE MIDDLE WEST

BY PROF. JOHN A. FAIRLIE

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In the study and discussion of American political ideas and methods the emphasis has been laid on the powers and activities of the National Government, and far too little attention has been given to the developments within the States. The State Constitutions of the revolutionary period have been examined, but mainly for the purpose of tracing the development of the Constitution of the United States. Almost nothing has been done to analyze the fundamental changes in the American political system by the revision and amendment of State constitutions in the two or three decades before 1850. The reconstruction period in the Southern States has been studied mainly with reference to the questions of secession and slavery; and other important changes made during that period, both in Southern and Northern States, have been practically neglected. And the full significance of alterations in State Constitutions during the past decade or so are far from being thoroughly appreciated.

It is the purpose of this paper to examine briefly the more recent changes in the Constitutions of the States of the Middle West, including the States of the old Northwest territory and the adjacent states west of the Mississippi river. At first sight, such a subject seems to offer comparatively little material for study. With the exception of Michigan, whose revised Constitution goes into effect with the beginning of 1909, none of these states have made a general revision of its Constitution since 1870; most of the constitutions date from before the Civil War, and a number from the middle of the last century. But the recent Michigan revision is of no little importance in itself; and quite a number of other states have been actively amending their constitutions during the past decade; while in several states of this group there is a more or less active demand for a general revision of the State Constitution, on account of the difficulty of amending the present documents.

We may begin with the states where least has been done. These are the continuous group running west from Ohio, including Indiana, Illinois and Iowa. In these states the process of amending the constitution is comparatively difficult. Proposed amendments must pass two legislatures or must be adopted by a majority of all those voting at a general election. In Indiana both conditions are required; and in Illinois there are additional restrictions. These conditions explain, at least in part, why no amendment has been adopted in Indiana since 1881; and only two each in Illinois and Iowa during the past decade. In Ohio a number (9) of amendments have been proposed since 1900. Five of these were adopted by the aid of an act under which, if a political party endorsed a proposed amendment at the state convention, a straight party vote was counted for the amendment. The most important amendments adopted by this device were those granting the veto power to the Governor, and changing the dates of elections so as to separate state and city elections. Amendments not so endorsed have uniformly failed to receive the required majority of all voting at the elections: The act providing for this method was repealed at the last session of the legislature; and several amendments submitted in November, 1908, were not adopted.

Both in Ohio and Indiana there is a considerable demand for a convention to revise the state constitution; and some action in this direction may be looked for before many years. In Illinois there is some sentiment in favor of a general revision; but as yet this shows no great signs of strength. In Iowa the question of calling a convention is submitted every ten years; and has been regularly defeated.

In the states to the north of these just noted, and also in Missouri, amendments to the State Constitutions have been frequently proposed during the past ten years, and a large proportion of these have been adopted. In Michigan no less than eighty amendments have been proposed by the legislature since the Constitution of 1850 was adopted, one-half of which have been adopted. During the past decade fifteen amendments have been submitted, of which eleven were adopted. In Wisconsin, about a dozen amendments have been proposed in ten years, and half of them adopted. In Minnesota more than a score of amendments have been submitted since 1895. Eleven of these, submitted in 1896 and 1898, were adopted by a majority of those voting on each question. But in 1898 one of the amendments provided that a majority of those voting at the election

should be necessary to adopt further amendments; and most of the amendments submitted since then have failed to receive this vote. North and South Dakota, whose constitutions date only from 1889, have also submitted and adopted a goodly number of amendments.

But the state in the Middle West which has been most active in adopting amendments to its Constitution has been Missouri. Since 1899 no less than thirty amendments have been submitted. All but one of the first fifteen (submitted in 1900 and 1902) were adopted, but in the last few years the larger proportion have failed. Of the eight amendments voted on in November, 1908, only two were adopted. The numerous amendments, however, do not seem to have satisfied the call for modifications of the constitution, and there is a considerable demand for a convention in Missouri to undertake a general revision.

The number of constitutional amendments proposed and adopted in these states is itself significant, as illustrating a widespread tendency towards alterations in the fundamental law. Since constitutional amendments in all of these states must be adopted by popular vote the large number of amendments also indicates a markedly increasing use of the popular referendum, even in states where the system of direct legislation has not been definitely established.

As to the substantive character of the constitutional changes, many of the amendments deal with relatively minor changes of interest mainly within the state concerned, and of comparatively little general significance. But some of the amendments involve changes important in themselves, and part of a more general movement. Several amendments adopted, and others proposed but not adopted, deal with changes in the constitutional provisions in regard to taxation. In Michigan the former system of levying small specific taxes on the gross receipts of railroads and other public service corporations has been replaced by levying the average rate of taxation on an ad valorem valuation assessed by a state board. In Minnesota an amendment adopted in 1895 provided for the taxation of certain classes of corporations; and another amendment voted on in 1906, but still in litigation, provided for removing restrictions on the taxing power of the legislature. In Wisconsin an amendment just adopted authorizes a graduated income tax in that state. In Missouri and Ohio, among the proposed amendments which have failed of adoption, have been those providing for changes in the methods of taxation.

One of the Minnesota amendments adopted in 1896 provided for Home Rule charters for cities,—joining a movement which had started in Missouri nearly twenty years before, and has made considerable progress in the mountain and Pacific states.

One of the Missouri amendments adopted in 1908 provides for the system of direct legislation through the initiative and referendum,—the first state of the Middle West to adopt this system from the states further West. In Ohio an amendment providing for the initiative and referendum seems to have failed for lack of a majority of the votes cast at the election.

These changes, with the grant of the veto power to the Governor in Ohio, constitute the most important changes in the states of the Middle West by the adoption of amendments to the existing constitution. As will be seen, most of these questions were also considered in the convention which framed the general revision of the Michigan Constitution; and they are likely to be further discussed in other states of the Middle West and the other sections of the United States.

THE MICHIGAN REVISION

Of much greater significance than the various constitutional amendments adopted from time to time is the general revision of the Constitution of Michigan, framed in the winter of 1907-1908 and adopted in November of this year. As already noted, Michigan has frequently amended the Constitution of 1850, no less than forty amendments having been adopted. Yet there have been a number of attempts to secure a general revision. Two revisions were drafted, one in 1867 and one in 1873, only to fail of ratification. Since the latter date the question of calling a constitutional convention has been submitted half a dozen times, but did not receive the required majority of votes until 1906.

The convention was elected in the summer of 1907, and was in session for four months, from October 22, 1907, to February 21, 1908. In its membership, organization and methods of procedure it was a notable body, and an excellent example of an American deliberative assembly at its best. Without entering into details, it may be said that it was a body of serious and intelligent men, with a fair proportion of members of a high order of ability. The methods of business insured thorough discussion of the numerous proposals, both in com-

mittee and in the convention as a whole, with no attempt at irrelevant debate for purposes of delay. Special attention was given to the language and arrangement, through the committee on arrangement and phraseology. There were wide differences of opinion and earnest debates; but on the critical questions the final result was at least acceptable to all the delegates, and at the final vote on the complete revision not a single negative vote was recorded in the convention.

In view of the failure of previous attempts at a general revision, it was gratifying to the convention to have its work ratified by the electors by a very decisive vote (244,000 to 130,000). This result also speaks well for the outcome of the convention's deliberations.

The revised Constitution of Michigan may fairly be called progressive. It includes a considerable number of important changes, some of which may seem radical in the more conservative states. But, as compared with provisions in the constitutions of some states beyond the Mississippi, such as Oklahoma and Oregon, the new Michigan instrument shows moderation. There has been no startling revolution. The fundamental principles remain as before. Yet the revision contains many alterations to meet the changed conditions that have developed since the Constitution of 1850 was framed for a young and frontier community.

The most important changes have been in enlarging the constitutional powers of local government, especially for cities and villages. When the Constitution of 1850 was framed, Michigan had but little urban population; and the legislature was given almost a free hand in dealing with municipal government. With the rapid growth of cities there developed an enormous mass of detailed special legislation, passed without consideration, yet consuming the time of the legislature; while at times the larger cities have suffered both from "ripper legislation," which they did not want, and from failure to secure measures they did want and need.

In the revised constitution the legislature is to provide for the "incorporation" of cities and villages and to limit their rate of taxation and restrict their power of borrowing money by general laws, while the debates make clear that classification of cities was not to be permitted. Subject to the constitution and general laws, each city and village has power to frame, adopt and amend its charter and to pass all laws and ordinances relating to its municipal concerns. More specifically power is granted to maintain parks, hospitals and

all works which involve the public health and safety; and—on a three-fifths vote of the electors—to acquire and maintain public utilities for supplying water, light, heat, power and transportation. Further, the consent of the local authorities is required for the use of highways or streets for public utilities, and all franchises are made subject to a referendum.

The provisions in regard to home rule charters do not prescribe the detailed methods, as is done in the constitutions of some states west of the Mississippi; and the powers of cities and villages are limited to some extent by provisions in the constitution and by restrictions which may be imposed by general law. But the provisions in the Michigan Constitution, it is believed, establish the principle of local self-government for cities and villages on a broad and adequate foundation for constructive legislation. The limitations provided are reasonable, and may be said to make the autonomy of the cities and villages in their local affairs the more secure. It is perhaps not to much to say that these sections of the Michigan Constitution are the best, as they are the latest constitutional provisions thus far to be found in any state.

The most fundamental change proposed in the Michigan convention, and the question most vigorously contested, was that for the initiative and referendum. A considerable number of delegates favored the complete program of direct legislation; but the active contest centered around a proposal for the popular initiative for constitutional amendments. After four days of debate, and a number of conferences, a modified provision was adopted. Under this, constitutional amendments may be proposed by petition of twenty per cent of the vote cast for secretary of state at the preceding election, the method of signing petitions being regulated to insure reliability; and amendments so proposed must be submitted to the electors for adoption, unless disapproved by a majority of all the members elected to both houses of the legislature, in joint session. Provision is also made for voting on alternative proposals; while amendments may also be proposed, as formerly, by a two-thirds vote of each house of the legislature.

While these provisions do not entirely meet the wishes of the pronounced advocates of direct legislation, they are a substantial recognition of the demand for a larger direct popular influence in securing constitutional changes in the future. Proposed amendments for which there is a strong popular demand cannot be prevented by

a minority of one branch of the legislature, nor by the policy of inaction. At the same time the possible veto of the legislature offers a check in the case of unjust proposals which might receive the required number of petitioners and provides for discussion and redrafting a proposed amendment to meet objections to the particular form in which it may be first offered.

The revised Michigan Constitution further follows the New York Constitution of 1894 in providing more definitely for future conventions. When authorized by popular vote, the convention will be elected and empowered to act without waiting for legislative action and will thus be free from any possible attempt at legislative control.

Provision is also made authorizing a popular referendum on any act referred by the legislature to the people.

In addition to the limitations on the legislature involved in the provisions already noted, other provisions are intended to restrict closely the enactment of special laws and to secure a larger measure of publicity and fuller consideration for all legislation. No special laws may be passed where a general law can be made applicable—the latter question to be determined by the courts—and in any case all special acts are made subject to the approval of the electors in the district to be affected. No bill may be passed until it has been printed for five days in each house. A majority of each house shall at all times have power to take a bill from a committee. Immediate effect may be given only to acts making appropriations and acts necessary for the public peace, health and safety.

In other respects the substantive powers of the legislature are enlarged. The work of reforestation is distinctly authorized. The power to regulate express rates is conferred; and the power to regulate freight and express rates may be delegated to a commission. The power to regulate the hours and conditions under which women and children may be employed is specifically mentioned. Power to create additional courts and to establish a system of circulating judges is also conferred.

The veto power of the governor is extended to apply to items of appropriation bills; and the governor's authority to require information from all executive and administrative state offices is more distinctly asserted. The salaries of the members of the legislature and elective state officials have been increased to a moderate degree, from the absurdly low figures established in 1850.

Women taxpayers are authorized to vote on questions which involve

the direct expenditure of money or the issue of bonds, and on the grant of franchises and the acquirement of public utilities in cities and villages.

Several important changes are made in the provisions on finance and taxation. The state board of assessors will assess not only railroads, but also the property of express, telegraph, telephone and other transportation companies. At the same time the power to impose specific taxes permits certain classes of property to be taxed differently from the uniform *ad valorem* basis, allowing for example, a specific mortgage tax. Another section prohibits the surrender or suspension of the power of taxation by any grant or contract made by the state or any municipal corporation. The prohibition on internal improvements has been modified so as to permit of reforestation and municipal ownership of public utilities, in addition to the former exceptions as to wagon roads and the expenditure of grants made to the state. Disclosures as to the state treasury led to restrictions on the deposit of state funds in banks. Another section provides that uniform systems of accounting shall be established for all similar state officials, boards and institutions and county officials, for the audit of such accounts, and for uniform reports of all public accounts.

Some minor changes have been made in the article on education in regard to primary schools; and the board of trustees for the state agricultural college is made a constitutional body, similar to the regents of the state university. Some minor changes were also made in the provisions as to banking laws and corporations; and the provisions in regard to the power of eminent domain were brought together in one article.

In the Michigan Constitution of 1850 the provisions usually found in the declaration of rights were scattered through various articles of the constitution. These have again been brought together in one article, as is done in all the other state constitutions.

Forty sections of the former constitution were eliminated from the revision as obsolete, objectionable or inapplicable to existing conditions. The eliminations amount to as much as the new matter inserted; so that the revised constitution is substantially the same length as the previous document.

Besides the changes adopted, many others were proposed and given more or less consideration. More than 400 proposals were presented; and while these included a good number of separate pro-

posals on the same subject, the large proportion of those offered failed of adoption. Among the more important may be noted those providing for direct legislation, minority representation in the legislature, the merit system in appointments, a budget of appropriations, central boards of control for allied state institutions, a public utilities commission, state insurance, prohibition of the liquor traffic and the sale of cigarettes, the eight hour day, trial of contempt cases, contributory negligence and the abolition of the fellow servant rule in certain classes of accident cases.

Some of these might well have been placed in the Constitution. Others deal with subjects on which legislation seems to be needed; but they were omitted as not properly within the scope of the Constitution.

Summarizing the revised Constitution as a whole, it can safely be said that it includes all that was valuable in the former instrument; that it eliminates a good deal that was no longer serviceable; and that it includes many new provisions, practically all of which are distinct improvements and make the fundamental law of Michigan much better adapted to the needs and conditions of the present. And it is a document well worth the study of those in other states interested in the amendment or revision of their state constitutions.

A consideration of these changes in state constitutions offers some suggestions in regard to proposed changes in the national constitution. In the first place, the increasing frequency of alterations in state constitutions must tend to weaken the idea that the Constitution of the United States is something sacrosanct and unchangeable; and will prepare the way for the amendment or revision of the national document. At the same time, however, the contrast between the frequency of changes in the two groups of Middle-west states shows that a difficult formal process of amendment imposes a serious obstacle to the adoption of changes. In the long run, public opinion may express itself; but under the cumbersome process provided in the national constitution action by means of individual amendments is likely to be unduly delayed. Under these conditions, the practice of the states in carrying out general revisions of their constitutions is bound to suggest the idea of a new national convention to undertake a general revision of the national constitution. When such a convention is held—and it may come sooner than now seems probable—there need be little fear of the abolition of the federal system or of any other radical revolution in our political system; but as in the

case of the revision of the Michigan Constitution many moderate changes can be made to adapt the national instrument to present-day conditions.

COMMENTS ON THE CONSTITUTION OF OKLAHOMA

BY R. L. OWEN

United States Senator from Oklahoma

The Constitution of Oklahoma has probably been misunderstood to some extent because of hostile criticism in the public press, inspired, as the people of Oklahoma believe, by the antagonism of special interests.

The Constitution of Oklahoma is nothing more nor less than what might have been expected from a community where hundreds of thousands of men were assembled within a few short years, coming from every state in the Union, and bringing with them their experience as citizens of other states. Trained lawyers from every state in the Union were assembled in Oklahoma, and took part in the drawing of the Constitution of the new State. They had before them a personal knowledge as well as the actual text of the Constitution of every state in the Union, and the knowledge of the judgments of courts relative thereto.

The most important thought which runs through the Constitution of Oklahoma is expressed in Section 11, of Bill-of-Rights, to wit:

“All persons have the inherent right to life, liberty, the pursuit of happiness, and *the enjoyment of the gains of their own industry.*”

It will here be observed that “the enjoyment of the gains of their own industry” is emphasized by being added to the usual declaration of the inherent right “to life, liberty, and the pursuit of happiness” which other Constitutions have uniformly set forth.

The Constitution was drawn with a view to making this special declaration effective, and with a view to controlling monopolies and special privileges. Section 32 for example declares that “Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed.” With a view to preventing this abuse Section 28 provides, as follows:

“The records, books and files of all corporations shall be, at all times, liable and subject to the full visitorial and inquisitorial powers of the State.”

Because corporate powers has been known to be exercised in transporting people out of the State, without due process of law, Section 29 provides:

"No person shall be transported out of the State for any offense committed within the State, nor shall any person be transported out of the State for any purpose, without his consent, except by due process of law." Of course the reasonable exceptions are provided.

With a view to enable the State to meet a monopoly found to have been greviously exercised in the West in the way of school-books, binding-twine, oil-refineries, etc., and it being believed that the experience of Kansas justified it, Section 31 provides:

"The right of the State to engage in any occupation or business for public purposes shall not be denied nor prohibited," with certain reasonable exceptions. Kansas undertook to protect her oil fields by proposing a State Refinery, but was unable to do so because the Constitution did not permit.

In order to insure publicity, and to prevent concealment of corporate, or other frauds against the people, the Constitution provides that a witness can be compelled to give testimony, whether it inculpates him or not; but when so testifying shall not be incriminated or prosecuted, as follows:

"Sec. 27. Any person having knowledge or possession of facts that tend to establish the guilt of any other person or corporation charged with an offense against the laws of the State, shall not be excused from giving testimony or producing evidence, when legally called upon so to do, on the ground that it may tend to incriminate him under the laws of the State; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence."

This section is relied upon to prevent successful conspiracy, and to make it inexpedient for persons to conspire together to defraud others, or to commit crime of any kind.

With a view to preventing corporate abuse of private individuals in the matter of property condemned, Section 24 provides:

"Until the compensation shall be paid to the owner, or into court for the owner, the property shall not be disturbed, or the proprietary rights of the owner divested. When possession is taken of property condemned for any public use the owner shall be entitled to the immediate receipt of the compensation awarded, without prejudice

to the right of either party to prosecute further proceedings for the judicial determination of the sufficiency or insufficiency of such compensation. The fee to land taken by common carriers for right-of-way, without the consent of the owner, shall remain in such owner subject only to the use for which it is taken."

With a view to preventing the possible tyranny of courts, under the influence of corporate power by the use of the blanket injunction, and punishing men for contempt, it is provided:

"Sec. 25. The legislature shall pass laws defining contempts and regulating the proceedings and punishment in cases of contempt: Provided that any person accused of violating or disobeying, when not in the presence or hearing of the court, or judge sitting as such, any order of injunction, or restraint, made or rendered by any court or judge of the State, shall, before penalty or punishment is imposed, be entitled to a trial by jury as to the guilt or innocence of the accused. In no case shall a penalty or punishment be imposed for contempt, until an opportunity to be heard is given."

The people of Oklahoma have the greatest possible respect for the courts, and recognize in their courts one of the most powerful arms of the government for the protection of life and property, and while they revere the judiciary they are not insensible to the fact that judges on the bench are at least but human beings and subject to the frailties of men, and should themselves be subjected to a reasonable restraint.

With a view of controlling railroads and public service corporations, and to require them to deal justly with each other, it is proved in Article 9, Section 2:

"Every railroad, oil pipe, car, express, telephone or telegraph corporation or association organized or authorized to do a transportation or transmission business under the laws of this State for such purpose, shall, each respectively, have the right to construct and operate its line between any points in this State, and as such to connect at the State line with like lines; and every such company shall have the right with its road or line, to intersect, connect with, or cross any railroad or such line."

They are required to transport each other's cars and passengers, under reasonable rules, and they are all put under the control of the "Corporation Commission." Competing or parallel lines are not permitted to consolidate. A railroad is not permitted to transport articles, manufactured, mined, or produced by it, or in which it may have a direct or indirect interest.

Transportation and transmission companies are forbidden to give free tickets, or passes, except in very special cases. The Corporation Commission has the right of inspecting the books and papers of transportation and transmission companies in the State, to require them to make reasonable reports; to give a just and proper service to the people of the State, and to fix the rate charged or classification of traffic after a proper hearing. Appeals are allowed from the Corporation Commission to the Supreme Court of the State in such matters, but the acts of the Commission are not to be suspended except by the Supreme Court. The Supreme Court is permitted to grant a supercedeas upon the filing of a proper suspending bond, filed with and approved by the Commission (or approved on review by the Supreme Court) made payable to the State in amount sufficient to insure the prompt refunding of any excess charges which might be found due upon appeal. Fictitious appeals are prevented by providing that no new evidence shall be submitted to the Supreme Court which was not submitted to the Corporation Commission at the time when their judgment was taken with regard to a given case. The Supreme Court has the right to fix new rates on appeal. The jurisdiction of the Commission does not operate to take away the jurisdiction of the courts, although the courts are generally without power to determine rates.

The railways are required to maintain proper stations for freight and passengers. The Corporation Commission is required to determine by a physical valuation "the amount of money expended in construction and equipment per mile of every railroad and other public service in Oklahoma; the amount of money expended to procure the right-of-way, and the amount of money it would require to reconstruct the road, grounds, tracks, depots, and transportation facilities, and to replace all the physical properties belonging to the railroad, or other public service corporations;" "to ascertain the outstanding bonds, debentures, indebtedness, and the amount, respectively, thereof, when issued, and the rate of interest, when due, for what purposes issued, how used, to whom issued, to whom sold, and the price in cash, property, or labor, if any, received therefor, what became of the proceeds, by whom the indebtedness is held, the amount purporting to be due thereon, the floating indebtedness of the company, to whom due, and his address, the credits due on it, the property on hand belonging to the railroad company, or other public service corporation, and the judicial or other sales of said

road, its properties, or franchises, and the amounts purporting to have been paid and in what manner paid therefor." The purpose of this information is to determine whether capital invested in the State is receiving a fair return upon its investment, and upon its properties, and whether it is dealing justly with the citizens of the State of Oklahoma, and with the further purpose of requiring them so to do, if necessary.

The provisions relating to the Corporation Commission were put into the Constitution with the express provision that the second legislature, meeting in January, 1909, might, by law, alter, amend, revise, or repeal these provisions.

There is no disposition whatever on the part of the people of Oklahoma to deal unjustly or ungenerously with capital invested in public transportation or transmission enterprises under public franchises. On the contrary the people of the State have a fixed purpose of giving stability and safety to capital; but at the same time they also propose to give safety to the people of the State against any wrongdoing whatever on the part of those who enjoy public franchises.

With a view to protecting the people of the State against the experiences of other states, where legislatures, committed to corporate powers, have been put in place and kept in place, and where such legislatures have refused to pass laws desired by the people, or have passed laws not desired by the people, the Initiative and Referendum has been established in Oklahoma. Article 5, Section 2, reserves to the people: "The power to propose laws and amendments to the Constitution, and to enact or reject the same at the polls, independent of the legislature, and also reserves the power at their own option to approve or reject at the polls any act of the legislature. Eight per cent of the legal voters, based upon the votes cast at the last general election, may propose any legislative measure; fifteen per centum, an amendment to the Constitution; five per centum, a referendum. The Referendum may run to an item, a section, or a part of an Act. The Initiative and Referendum may be used in any county, or district, or municipality."

A further precaution the people have taken against machine politics is the mandatory primary, including the nomination of state, district, county, and municipal officers, including United States senators. [Purity of elections is promoted by publicity and limiting strictly campaign expenses by statute.]

Taxes are required to be assessed upon the actual value of the property, determined by what such property would bring by voluntary sale, the purpose being to prevent the scaling down of such assessments in different portions of the State by assessors, on a rule not fixed. This rule is a rigid rule, intended to compel an equitable distribution of the taxes without favoritism.

Various precautions are taken to prevent the crafty manipulation of the making of laws in the legislature by the expert agents of special interests. For example, every act of the legislature shall embrace but one subject, with certain proper exceptions; no law shall be revived, amended, or the provisions thereof extended, or conferred unless it is reenacted and published at length. The governor may veto one item in an appropriation bill without affecting the remainder of such bill. The legislature is forbidden to pass any law granting to any association, corporation, or individuals any exclusive rights, privileges, or immunities within the State, or to pass special laws relating to localities or individuals.

Another precaution against the abuse of power is provided as follows:

"Article 6, Sec. 4. The governor, secretary of state, state auditor, and state treasurer, shall not be eligible to succeed themselves."

With a view to improving the conditions of labor Oklahoma has established a department of labor, and a board of arbitration and conciliation. The common law doctrine of fellow servants is abrogated, as to the employees of railroads, street cars, and mining companies.

The law protects from forced sale the homestead of the family.

The department of highways is established.

Compulsory education is provided.

Any city containing a population of more than 2,000 inhabitants may frame a charter for its own government.

After five years there shall not be permitted any ownership of land by aliens within Oklahoma. Monopoly of land may be prevented (and is prevented by a progressive tax by statute).

Corporations are discouraged from speculating in real estate.

An eight hour day is provided for State, county, and municipal labor.

Contracting convict labor is prohibited.

Child labor is prohibited.

Underground work for children and women is prohibited.

Contributory negligence is a question of fact to be left to the jury.

The right of action to recover damages for injuries resulting in death, shall not be abrogated, and the amount recoverable shall not be subject to any statutory limitations.

The contract of any person waiving his constitutional rights shall be void.

The constitution may be amended by initiative petition, as above stated, by act of legislature proposing an amendment to be voted on at the next regular general election, or by a two-thirds vote of the legislature, by special election. A majority of all the electors voting at such election may adopt such amendment.

No constitutional convention can be called to propose alterations, revisions, or amendments to the constitution, or to propose a new constitution, unless first provided by a referendum vote, and any amendments, alterations, revisions, or a new constitution proposed by such constitutional convention shall be approved by a majority of the electors voting thereon before becoming effective.

The federal government in the enabling act required Oklahoma to adopt the policy of prohibition for that portion of the State which constituted Indian Territory at the time of the admission. This was due to treaty obligations with the five civilized tribes of Indians. Oklahoma made the rule uniform throughout the State by a referendum vote at the time of the adoption of the constitution.

The people of Oklahoma are content with their constitution and may easily amend it if they should ever find it in any degree disappointing.

CONSTITUTIONAL REVISION IN VIRGINIA

BY J. A. C. CHANDLER

Richmond, Va.

By proclamation of the Convention (and not by popular vote) the revised Constitution of Virginia went into effect on the tenth day of July, 1902. Before that date, the government of Virginia, with a few amendments, was under the Constitution adopted in Reconstruction days and finally put into operation in 1870. The call for a convention which resulted in the new Constitution of 1902 came chiefly as the result of movements in the South of more than twenty years' duration for the modification of suffrage, Virginia not considering seriously any change until about 1899. When the question of a convention was submitted to the people in 1900, other matters than suffrage were assigned as reasons for a new Constitution, among them being greater economy in the administration of affairs and a better system of taxing corporate enterprises.

The new constitution made a number of changes in the executive departments. Before 1851, only the General Assembly was elected by popular vote, but after that date, the governor, the attorney-general, the lieutenant-governor, and even the judges were elected by the people. By the Underwood Constitution, the members of the general assembly, the governor, the lieutenant-governor and attorney-general were the only State officers elected by popular suffrage. The new constitution not only continued this but also provided for the popular election of such officers as the secretary of the commonwealth, the treasurer, the superintendent of public instruction, and the commissioner of agriculture, but the first and second auditor of public accounts and the register of the land office are still elected by the legislature.

With reference to the judiciary, the election of judges was still left in the hands of the general assembly, but the new constitution made many changes in the judiciary. Under the Underwood Constitution, every county had its own judge, who held court at least once a month. In addition to the county judges, there were sixteen circuit

judges whose duty it was to hear appeal cases and to have primary jurisdiction in certain civil cases. These circuit judges held court in the several counties of their districts not less than twice a year. Above these courts was the supreme court of appeals to which cases were taken from the lower courts. Under the plea of economy, the county courts were abolished and the circuit courts increased to twenty-four (later by the legislature to thirty).

No county now has court oftener than once in two months (except Norfolk county), while the smaller counties have court only once in three months. The increasing of the number of circuits and of the salaries of the judges has not materially lessened the expense of the judiciary to the State, but the new system has delayed justice in some instances. To illustrate, recently in a small county in Virginia, a landlord, under contract, gave a tenant 30 days' notice to vacate. The tenant resisted, and the landlord proceeded to take steps for ejectment in a justice's court. The decision was in favor of the landlord, whereupon the tenant, under the law, took an appeal to the circuit court, which had been held in that county just a week before. As in that particular county the court met bi-monthly, the trial of this case was postponed 53 days instead of 23. In the meantime, the tenant continued in possession of the house and the landlord was unable to make use of his property as he had anticipated.

In rural districts, the old monthly court was of great service, not only in promoting justice but also in promoting trade of various kinds among the country people. While the latter benefits have been lost in some counties, in others the people have continued to observe court day for social and commercial purposes, the supervisors meeting on that day. Hence we hear in some counties of "supervisors' court" though no real court is held. Fortunately for the cities their courts have not been abolished though an effort was made in the Constitutional Convention to do so. Some efforts were made also to have the judges elected by the people as they had been under the constitution of 1851, but this failed and the judges still are elected by the general assembly. Thus the convention, though its policy was to separate the legislative from the executive and judiciary, by allowing certain executive officers and the election of the judges to remain in the hands of the general assembly, failed in one of its expressed purposes. However, in dealing with the general assembly, the constitutional convention was in a sense antagonistic, and tried in certain ways to tie the hands of that body.

First, the term of the general assembly was cut from 90 to 60 days. Secondly, no measure could be passed unless on its final passage in each house the recorded vote of yeas and nays was an absolute majority of each house, those voting in the affirmative being at least two-fifths of the entire house. In other words, if, in the house of delegates, a measure was on its final passage, the bare majority of 51 being present, the bill would not be passed by a vote of 26, but would require a vote of 40 being two-fifths of the 100 members of the house of delegates. Many restrictions were placed upon the general assembly as to special or private law, chief among which was the prohibiting of it from creating private corporations or amending, renewing or extending the charters thereof, the granting to any private corporation, association or individual any special or exclusive right, privilege or immunity, or naming or changing the name of any private corporation or association. Moreover, the general assembly was forbidden to change the franchise tax of one per centum imposed upon the entire gross receipts of railways and canals until after the year 1913. Many other instances could be mentioned of restrictions not found in the old constitution, but the above suffice to show the point with reference to the powers of the legislature.

Under the old constitution, of particular importance had been the power of the legislature to grant charters, and in many instances this power had been abused, prominent politicians securing lucrative franchises. A corporation commission was established for this purpose, of which more later. The chief features of the new constitution are centered around the suffrage clauses and corporation commission, which two features we desire to discuss briefly.

1. We are told that the first legislative assembly which ever met in America assembled at Jamestown on the thirtieth of July, 1619, that it was composed of 22 delegates elected from the 11 plantations of the colony by the inhabitants thereof. There is no evidence that any restriction whatever was placed upon suffrage (except for the year 1665-1656, when only housekeepers were allowed to vote; but this was repealed and all the free white men over 21 years of age were allowed to vote) until Sir William Berkeley, under instructions from Charles II, had suffrage restricted to freeholders only. This restriction was nominal as no definite amount of land was specified. In 1712, Spotswood in writing to the lords of trade in England complained of the fact that it was very hard to get satisfactory members

of the assembly because any man who owned as much as one-half acre of land had the right to vote, and that the elections were often accompanied by rowdyism. Thereupon, Spotswood was authorized to have suffrage restricted, but it was not until 1736 that a freehold was defined as 50 acres of land unimproved or 25 acres of improved land with a house on it, or a house and lot in a town. This law, with interpretations by the legislature, continued as the suffrage basis of Virginia until 1830 for it was embodied in the Virginia Constitution of 1776, though Jefferson proposed a plan of government which arrived at Williamsburg too late to be considered by that convention, suggesting that all freemen who had paid scot and lot for two years preceding the election should be entitled to vote. It does not seem that the Virginians of 1776 understood the meaning of their famous Declaration of Rights which declared that "All men are by nature equally free and independent," or they undoubtedly believed that no man could give "evidence of permanent common interest with and attachment to the community" unless he owned real estate.

With the growth of western Virginia inhabited by sturdy freemen, the struggle was soon to begin for the extension of suffrage. In the convention of 1829-1830 the western people made a brave fight for free manhood suffrage, but succeeded in getting only a very unsatisfactory compromise which extended suffrage to certain housekeepers, lease holders, tenants, etc. This convention of eminent men succeeded only in fixing suffrage qualifications which the courts of Virginia were not able satisfactorily to interpret. The western people continued their fight for the extension of suffrage and the equalization of representation, which resulted in a new constitutional convention in 1850, which provided for universal free white manhood suffrage without any poll tax or educational qualifications. This principle of suffrage was embodied in the Underwood Constitution, except that it was free manhood suffrage without reference to whites or blacks as provided under the Constitution of the United States and the Reconstruction Acts. Efforts were, however, made to disfranchise a number of whites on account of the part they had taken in the War of Secession. In 1876, the constitution was amended by requiring voters to prepay their capitation taxes. This clause proved to be a great source of bribery, as candidates for office would prepay the capitation taxes of those who would vote for them; hence this provision was struck out by an amendment in

1882, so that for 20 years preceding the new constitution, Virginia had universal manhood suffrage without any restrictions.

Under the Constitution of 1902 the suffrage clauses are more exacting than ever before. First, as to residence, it requires that a man shall reside in the State two years, county, city or town one year and the precinct where he votes 30 days next preceding the election in which he offers to vote. The Underwood Constitution required residence in the State of 12 months; and in county, city or town of three months.

Special registrations were held in 1902 and 1903 at which the following classes were allowed to register:

First, any person who had served in time of war in the army or navy of the United States or the Confederate States or of any State of the United States or of the Confederate States.

Second, the son of any such person.

Third, any person who owns property upon which for the year next preceding that in which he offers to register the States taxes aggregating at least \$1 have been paid.

Fourth, a person able to read any section of this Constitution submitted to him by the officers of the registration and to give a reasonable explanation of the same; or, if unable to read such section, able to understand and give a reasonable explanation thereof when read to him by the registrars.

All who registered under these provisions constitute a permanent roll and no persons having registered under them will have to re-register unless he has changed his residence from the State. Most of the old soldiers registered under the first clause, as they are exempt from the capitation tax, but only a few sons of old soldiers registered under the second clause, preferring to register under the property or the educational clause. Under the first two clauses, very few negroes could register, but under the third clause quite a number of them registered because nearly one-fifth of the farms, though only one-twentieth of the land of Virginia, is owned by negroes. Under the first part of the fourth clause registered most of the young white men of Virginia and some of the negroes who could read and write.

Under the second part of the fourth clause a number registered. This was the only part of the registration in which there could be any discrimination as to race. For example, a registrar might for an illiterate and poor white read to him some simple passage and accept almost any answer as a proper explanation. With

reference to negroes, his conduct could have been different. Many negroes attempted to register under the latter part of the fourth clause, and their statement is that the registrars always read to them the hardest sections so that they would not be able to explain them. We doubt not that there is some truth in this statement though we also know that on a whole the registrations were conducted fairly, and in many country communities a number of negroes were allowed to register under the understanding part of the fourth clause.

It will be recalled that, in Mississippi the constitution provides that the registrars shall in all cases be the judges of a man's qualifications to register. The story is told that a negro professor applied to register. The first question asked him by the board was "What important principle of the *Magna Charta* is embodied in the Constitution of Mississippi?" He is said to have answered: "That no negro shall be allowed to vote in this State," whereupon, the registrars declared that he was qualified to vote.

The Virginians, however, have tried to remove possibilities of fraud in registration, and, consequently, its constitution provided that after the first day of January, 1904, there should be no further registration under any of the clauses we have cited. To become a voter in Virginia, now, a man must simply meet the residence requirements, personally pay all poll taxes assessed or assessable against him for the three years next preceding that in which he offers to register; or if he came of age at such time that no poll tax shall have been assessed against him for the year preceding the year in which he offers to register, he must pay \$1.50 in satisfaction of the first year's poll tax; and he must, unless physically unable fill out the registration blank in his own handwriting without aid, suggestion or memorandum, in the presence of the registration officers, stating therein his name, age, date and place of birth, residence and occupation at the time and for two years next preceding and whether he has previously voted, and if so, the State, county, and precinct in which he voted last.

All voters except veterans of the army or navy of the United States or the Confederate States are required to have personally paid at least six months prior to the election all State poll taxes assessed or assessable against them during the three years next preceding that in which they offer to vote. Moreover, a voter who has registered since the first day of January, 1904, can receive no assistance in preparing his ballot, though all others have the right to receive assist-

ance. The usual restrictions on suffrage as to idiots, insane persons, criminals, etc., are embodied in the constitution.

It is thus seen that the present basis of suffrage is an educational qualification; but no man has to undergo an examination on the constitution, as the test of his educational qualification is his ability to fill out properly the registration blank. This applies to whites and negroes, and as far as we are able to learn, no effort is made by the registrars to mislead any man in registering. It is true that the number of questions which have to be answered in detail on the registration blank does prevent some from registering who are able to write their names.

Under the new constitution, more than one-fourth of the people of Virginia who could have registered under the old constitution are now disqualified. The prepayment of poll tax for the three years next preceding the election at least six months in advance of the election at which a registered voter expects to vote has disfranchised a great number, both whites and blacks.

The census of 1900 shows that the males of voting age of Virginia were 447,815. The report of the auditor of public accounts of Virginia shows that in 1905 the total number paying capitation taxes was 256,656. A number of these capitation taxes, however, were not paid in time to qualify persons paying the same to vote. A number of white men who are registered are careless and fail to remember the requirements of the law with reference to the time of the prepayment of poll taxes. Many negroes do not care to pay their poll taxes unless some one furnishes the money.

The clause requiring voters to personally pay their poll tax has given a good deal of trouble. The question was brought to a test in the case of Tazewell and others vs. Herman, treasurer of the city of Norfolk, in an effort to have the treasurer place upon the list, certified to the clerk of the court, of those qualified to vote on account of prepayment of tax, the names of all persons who had paid their taxes whether directly or indirectly. The case was taken to the supreme court of appeals and there decided on March 17, 1908, that the treasurer must embrace on his list only such persons as have personally paid their taxes. Thus great power is given to the treasurer to say when a man is qualified and how a man has qualified, for the court has not yet decided what *personally paid* means, whether by check or appearing in person. The case has not yet been decided in full, as Attorney-General Anderson has filed in the supreme court of appeals of Virginia a petition for re-hearing.

A very interesting situation prevails as to the poll taxes in the ninth congressional district of Virginia where the republican party is in the majority. It is very generally understood that the leaders of both parties in that district see that many poll taxes are paid, the party managers lending to the voters the money with which to pay their poll taxes, and taking notes to protect themselves from charges of bribery. Rumors are afloat that the same thing is done also in other parts of the State.

It might be observed that the question of legality of the Virginia suffrage laws under the Constitution of the United States has never been sifted. In October, 1903, in the case of Jones and others vs. the Virginia State Board of Canvassers, application was made in the circuit court of the United States for a writ prohibiting the issue of a certificate of election. The plaintiffs in that petition stated that the Constitution tended to disfranchise negroes contrary to the laws of the Constitution of the United States. The matter was taken to the supreme court and dismissed on the grounds of lack of jurisdiction.

II. Probably the most interesting feature of the Constitution of Virginia of 1902 was the creation of a corporation commission of three members appointed by the governor. Its duties are defined in great detail in the constitution; and in general they are: To regulate corporations, that is, all trusts, associations and joint stock companies having any powers or privileges not possessed by individuals, or unlimited partnerships excluding all municipal corporations and public institutions owned or controlled by the State; to create a corporation, extend or amend its charter, the general assembly having no right to interfere whatever, save to pass general corporation laws under certain restrictions. No member of the commission can, at the time that he is a member of said commission, be employed by or hold any office under any corporation, or even be interested in any corporation. In other words, he must not be a stockholder in any company that is incorporated. Under the constitution the commission is to *legislate*, as it were, on passenger and freight rates of all the railroad companies. As a *court*, it hears all cases affecting the violation of the rates, subject, of course, to an appeal to the supreme court of the State. The corporation commission is required by the constitution to see that short hauls shall not be charged at a higher rate than long hauls, thus preventing unduerailroad discrimination. As a board of assessors, the commission is required to assess

the value of all railroad property for taxation, the said property to be taxed at the same rates as other property in the State. In addition to this, a franchise tax of 1 per cent on the gross receipts of transportation companies is imposed, and this cannot be modified by the general assembly until after 1913. The constitution also provides that no net income tax shall be assessed against a corporation.

By act of the general assembly, approved April 15, 1907, the spirit of the constitution with reference to the corporation commission was embodied into law. The commission was given all the powers of a court for adjudicating matters relating to corporations, to issue writs, fix fines and penalties, etc.; and its powers to carry out the spirit of the Constitution in legislating as to repairs to railroads, schedules, tariffs of charges, etc., were defined.

The corporation commission secured the names of all the corporations in the State and fixed the value of their property so that taxes might be duly levied. Under this law, for every new charter granted it charges a fee of from \$5 to \$25 according to the amount of capital stock. More than 5000 charters have been issued.

A general franchise tax on all corporations according to their capital stock is levied annually. This tax does not apply, however, to transportation companies which, under the constitution, are taxed 1 per cent on the gross earnings. Under the old laws, corporations were taxed one per cent on their *net* income, which many corporations never reported.

The systematic work of the corporation commission has added immensely to the revenues of the State. The total revenues of Virginia from all sources for 1901 were \$3,633,156; the total revenues from all sources for 1907 were \$5,250,486. Let us illustrate the increase in revenues from the railways. Under the old constitution, a State tax at 30 cents on a \$100 on the road-bed and rolling stock, etc., was \$176,000 in 1901; under the new constitution, at 20 cents on a \$100 it was \$162,313 in 1907, showing that the revenue from the assessed value of the property of railways, etc., is less than it was six years ago. But the franchise tax in 1907, at 1 per cent on the gross receipts of the railroads was \$451,169, while in 1901 the tax on the net income of the railroads of Virginia was only \$29,012. In 1901 the total taxes raised from railroads, though the tax rate was on values even higher than now, amounted to only \$260,000, while in 1907 the total taxes from railroads were \$735,000. In 1901 other corporations

paid no special tax, but in 1907 there was collected from other corporations than the railroads 350,664, thus making from all corporate sources in 1907 the sum of \$1,085,000 as against the sum of \$260,000 in 1901.

The corporation commission has had two very important orders tested by the railroads. In 1903, the commission adopted a set of rules regulating demurrage and other car service charges. The railroads appealed the case to the supreme court of Virginia, which decided that under the constitution, the corporation commission had a right to fix such regulations. These are now in effect and work well, not only for the people but for the railroads themselves.

Exercising its legislative functions, the corporation commission on April 27, 1907, put into effect rules regulating passenger rate charges in Virginia, known as the *two-cent* rate. The railroad companies objected seriously, but by agreement these rates were allowed to go into effect until the matter could be carried through the courts. The railroad companies took the case to the circuit court of the United States. The commonwealth pleaded that the circuit court of the United States had no jurisdiction and could not enjoin a State court, being prohibited by statute of the United States. Judge Pritchard entered decrees against the State, whereupon the attorneys representing the commonwealth carried the case into the supreme court of the United States, which recently rendered an opinion.

First on the plea of the railroad companies that the Virginia States corporation commission was an illegal body, favorable to the State; but secondly on the plea of the railroads that the United States circuit court had a right to enjoin an order of the commission, unfavorable to the State, though it decided that the railroad companies should not have appealed to the United States circuit court until it had first made use of the State court of appeals. It retained the case on its docket until it is seen whether the railroads still have the right of appeal to the state court of appeals, thus holding that the decrees of Judge Pritchard were in error and that the case must first be fought out in the supreme court of Virginia, suit having been prematurely entered in the circuit court of the United States.

As a matter of fact, this decision is a victory for neither the State nor the railroads, though in a sense the railroads have won in that the jurisdiction of the United States circuit court to enjoin the corporation commission has been affirmed. It remains to be seen how the matter may finally be adjusted.

Inasmuch, however, as the decision of the supreme court holds that a single judge of a subordinate court of the United States can enjoin an order entered by the commission, a rule is made humiliating to all the States,—a rule which strikes at the root of our State governments, and their right to regulate intra-State commerce, but which above all is likely to delay justice, for if, as soon as an order is made by the corporation commission, an injunction can be issued by an inferior court of the United States, it may long delay such an order from going into operation.

PHILIPPINE PROBLEMS AFTER TEN YEARS' EXPERIENCE

BY JAMES A. LE ROY

It is not the purpose of this paper to summarize the accomplishments of the past decade in the Philippines or to institute a comparison with conditions under Spanish rule. An adequate summary and comparison of this sort would run far beyond the time allotted here. And apart from the fact that the period has not come for essaying historical judgments in this case, it is more pertinent to the purposes of such a gathering as this to consider our experience primarily with reference to our course of action in the future. Looking at our Philippine experience to date only in its main aspects—therefore of necessity slurring over details—what does it seem to teach as to the success of our general policy and as to desirable modifications in our methods?

For various reasons, undue emphasis has, since American occupation of the Philippines, been put upon the purely political questions connected therewith. The first consideration was the insurrection, the demands of its leaders and the exigencies it created being primarily political in character. Let us reverse the emphasis here, taking up first fiscal and economic problems. For one thing, these matters are more vital to the welfare of the Philippine people as a whole than are the pending political questions. Moreover, when a rich, industrially well-developed and highly individualistic country like ours assumed control of affairs in a backward, semi-communistic country in the tropics, it was inevitable that there should be some shock in the readjustment, even if it had not been accentuated by warfare and pestilence. It is precisely in the matter of income and outgo, in budgetary legislation and administration, that we are weakest in government at home. And ours is a high-priced country and we a rich and extravagant people. We have had to learn how to cut our cloth more carefully in the Philippines; and, as might be expected, there are still some lessons to be learned in governmental tailoring.

This is not to be taken as endorsing the idea, now apparently prevalent, that the government we have set up is much more burden-

some for the Filipinos than was that of Spain. The opposite is true. Counting the cost of forced labor, official "graft" and other evils of the fee and farming systems of taxation, the revenues of the friars and other impositions resultant upon the partnership of church and state, careful examination shows the burden of government to have been heavier upon the Filipinos under Spain than it is now. Moreover, it was less equitably distributed as regards ownership of property than is now the case. Further, too, owing to the stabilization of the currency and the rise of wages, the Filipino of the masses is today better able to pay taxes than he was before 1898.

Nor is the present Philippine government really a costly one, when judged by absolute standards. Mr. Alleyne Ireland, to be sure, made it appear in a very unfavorable light, representing its cost as being 46 per cent of the value of exports, disregarding Philippine internal commerce and calling the exports practically the "total industrial product" of the islands. But he chose to compare the Philippines according to this test only with Ceylon, among British tropical colonies having more than an insignificant population. Leaving Burma and other portions of British India out of the comparison, the same test applied to Java, often cited as the leading type of that sort of commercial development of a colony which Mr. Ireland advocates, would place the Dutch possession in a worse light than the Philippines. The chief objection to Mr. Ireland's methods, however, lies in his choice of this one single test as all-sufficient with tropical colonies. The Philippines are a large archipelago, not a single island with intensified cultivation; and they have considerable diversification of agriculture for the tropics and a relatively large internal trade. On the basis of taxation *per capita*, the Philippine government may welcome comparison with other colonies or tropical countries, including not only Ceylon but also less-developed regions. Make the comparison on the basis of wages or annual income, and it becomes still more favorable for the Philippines. The truth is, the Spanish government taxed the Filipinos lightly, and, as indicated, our government is still less of a burden on them.

It is, of course, to be taken into account, as a feature of our "colonial policy" in general, that the Philippines do not contribute at all to the support of the army and navy which protect them and also to some extent help maintain order internally. But, when we consider this matter from the standpoint of home interests, we should at the same time not fail to note the statements of Mr. Taft in his special

report on the Philippines of last January, tending to show that the cost of the Philippines to our national treasury has been much exaggerated.

Fault is to be found, not with the amount of taxation in the Philippines, but with the system. We have improved upon Spain in respect of the incidence of taxation, as already indicated. And if we had done no more than sweep away the old system of fees, premiums, monopolies, etc., and the "graft" that went therewith, establishing instead imposts of fixed amounts and paying stated salaries to all officials, our achievement in fiscal reform would be great. Still, we have not yet fully realized our opportunity nor grappled with the subject in a broad constructive manner. We have been, for the most part, just looking after ways and means from year to year. And, as I look at it, the greatest thing we can do in the Philippines is to work out a fiscal system so adapted to the present needs and conditions of their inhabitants, so adjustable to the growth of those needs and the future expansion of their industries, that, no matter what changes may be made in the government of the islands, the system in its working principle and in its main outlines will stand, a permanent achievement. Perhaps I am holding up an impossible ideal here; but I do not think so. And, in any event, we can improve the present system, and we ought to aim at greater stability and a better-balanced fiscal régime.

Our only failure in this field thus far—and considered in all its aspects, social and political as well as fiscal, it is not wholly a failure—is in the matter of the tax on real property, principally land. The backing and filling on this subject from 1901 to date shows something—indeed, various things—to be wrong with this tax. However, let it be said at once that it is no small achievement to have established the principle of a tax on land in the Philippines, where it had only been proposed before 1898; and no fiscal system in those islands can in future fail to make a prominent feature of such a tax. The ravages of war, rinderpest and other calamities made it an especially difficult time to inaugurate such an innovation; and it would not have been accepted so far as it has been but that the local governments were made primarily dependent upon it. In part, too, its difficulties of enforcement have been caused by the failure of the local governing bodies to respond fully to the autonomy conferred on them in 1901. No one in this gathering needs, however, to be reminded that there are great defects in our American system of

valuation and assessment. That it should have failed to work well in the Philippines, with many special complicating conditions (which there is no time to detail here), is not surprising. For one thing, only now is a beginning being made in the registration of land titles. But, most important consideration of all, it is not certain that an *ad valorem* tax, and not the common Oriental system of tax on income, is best suited to Philippine conditions. First of all, we need a thorough survey of conditions, province for province, made by a competent expert or experts, assisted and checked by local advice and information. This should be the basis, first of all, of a decision as to the principle of taxation to be adopted; and then there should be, though under central supervision and control, a wide degree of flexibility between provinces or islands as regards levy, assessment, and collection—even, perhaps, a variation as regards the principle of taxation between different provinces. Steps have already been taken toward securing greater flexibility, and Governor-General Smith is showing much interest in this problem and an open mind upon it. But it is to be repeated that we need a thorough re-examination of the whole subject, made on the ground in the provinces, giving us fuller and more classified data than we yet possess on the conditions of land tenure, cultivation, wage and share systems, etc. And, finally, the land tax should be coördinated with the system of internal taxation as a whole.

The internal revenue law of 1904 needs overhauling, anyway, and the whole system of internal taxation ought to be made over from the ground up. The attacks on the law of 1904, made before its adoption by distillers and tobacco manufacturers, were grossly inaccurate, and have not been justified by results. It is not here that changes are needed, unless in details. But the law is objectionable under other schedules, both in principle and methods. Any taxation on business transactions is at least questionable; and this law has the further objectionable features of being unduly inquisitional and relatively expensive of administration, also of instituting double or triple taxation on some products and transactions therein. An income or occupation tax may be advisable in the Philippines; but it can be imposed more simply and directly.

Of course, such a comprehensive, coördinated system of taxation as is here proposed can not be established without primary reference to the customs tariff. And here the scene of difficulties shifts from Manila to Washington. Apparently, the free entry of Philippine

tobacco and sugar into the United States, even temporarily or under restrictions as to amount, cannot be secured without the *quid pro quo* of complete discrimination in favor of American goods in Philippine ports. If that be so, I believe the effort on behalf of Philippine producers had better be abandoned. I believe free entry of Philippine sugar and tobacco would not injure American producers, for the same reason that I have always regarded it as a concession primarily of political, instead of economic, importance to the Philippines. But Congress has for so long refused the concession that it has lost in large degree the political effect it might have had. And to attempt to force trade unnaturally between the islands and our country is to work injury to both. As regards the islands, this consideration may be waived, in view of the immediate influence toward raising semi-prostrate industries and toward improving methods of cultivation and preparation of crops, putting them in better shape to enter in future the natural markets at their doors—as a temporary measure, in other words, and as a concession freely made by the United States, without bargaining for a definite, immediate return. But, when this concession is linked with a plan for forcing American goods into the Philippines in advance of their natural conquest of that market in fair competition, it ceases to be desirable at all, in the interests of either party. It seems to me that Philippine history under Spain affords clear and eloquent proof of the harm and the futility of preferential trade measures—harm to the archipelago, in checking the proper, natural development of its resources, futility, as regards the cherished object of fostering trade with the mother-country.

Looking at the question purely in the light of American interests, it means that we give the lie to our protestations about the "open door." It is idle to say that the question is altered by our being the sovereign power in the Philippines. We have not declared our sovereignty permanent there, but have explicitly left that an open question, and the present consensus of opinion at home and the drift of events in the islands are against permanent retention. Essentially, our situation there is not different from that of Japan in Korea, for example. Are we to barter away all show of consistency on the "open door" question for the little mess of potage which the Philippine import market at present affords?

As for the Philippines and the Filipinos—American residents therein to the contrary notwithstanding—their welfare demands a

low revenue tariff, applied uniformly against all the outside world, ourselves included. That distant archipelago in the Far East is not at all comparable with little Porto Rico, lying near us in the Atlantic, and apparently incorporated into our territory permanently. The natural markets of the Philippines are at their doors, in Asia and the Western Pacific. Indeed, if the free admission of Philippine sugar into the United States, under a virtual bounty system, would result in directing large shipments of sugar to our country, after unnaturally stimulating in those islands a culture which makes against small holdings and for large plantations and a peón system, then it is objectionable in view of our general policy in the islands.

If we can not secure the Philippines against preferential tariff handicaps and interference with its fiscal and economic autonomy except by a continuance of the present duties on Philippine products coming into our ports, then it were better to leave them so, for the future interests of all concerned. But the principle above outlined may be maintained consistently with special reciprocity arrangements, such as are made with outside countries. In particular, if American cordage manufacturers are to continue to enjoy the rebate of the Philippine export duty on hemp, we owe the islands at least an equivalent concession.

The clause of the Treaty of Paris granting to ships and goods of Spain, and hence of all favored nations, equal treatment with our own in Philippine ports will expire on April 11 next. The whole question will be before Congress in the coming special session. Will it abandon the idea of grabbing the petty Philippine trade, and thus open the way for a thoroughly balanced and scientific fiscal system in the Philippines?

Should it adopt a discriminatory tariff for the Philippines, revision of the fiscal system over there will soon be made necessary, anyway. And should Philippine tariff legislation fail again, the opportunity is still open for the sort of comprehensive, constructive program of internal taxation already urged in this paper. In any case, the work calls for the man; he does not appear in the islands at present; and he should be drafted.

The way to meet the need has already been pointed out by our experience in the reform of Philippine currency. The usefulness of the expert, both for preliminary investigation and for directing the details of administration, has therein been strikingly shown. One meets everywhere the evidences of the benefits wrought in the

Philippines by currency reform, socially and politically as well as industrially and commercially.

We are beginning to make headway in land surveys and registration of titles. The friars' estates, too, have now entered the prosaic, but still difficult, stage of administrative detail. The postal savings banks are in their initial stage, and a government land bank is about to be inaugurated. The pros and cons of Chinese exclusion have been argued, and the question is settled, for the present at least.

In the matter of public works, too, our Philippine administrators are finding themselves. The lack of resources to cope with the many and varied needs of this backward archipelago was at first, and still is, the chief obstacle to rapid improvement. However, even the limited resources were not always well used at first, as is not surprising. More yet, improvement in land transportation was hindered by the original effort at decentralization already mentioned. The central government from the first took charge of improvements in water transportation, and has achieved notable results in harbor works, charting of coasts and bays, lighthouses and other aids to navigation, besides directly and indirectly stimulating the growth of inter-island shipping in various other ways. It has also invoked the public credit to procure the building of important railway lines, now completed or well under way. But the grant of local autonomy in 1901 involved the expectation that the provincial and municipal bodies would do considerable of the necessary building and rebuilding of highways and would keep them in repair. Greater centralization has been shown to be necessary in this as in other respects; and a system of cooperation between local and central governments, with the latter having pretty full powers of control and supervision, has now been reached and promises better results in the future.

In sanitation, the record of the new government is notable, especially in Manila, but to a very considerable degree in the provinces as well. Here again the efficiency of the program adopted is to some extent blocked by the granting of considerable powers to the local governments and by the necessity of consulting Filipino customs and prejudices on every hand; but, in the main, that is a necessary consequence of the general policy we are following.

In scientific research generally, the work done under Philippine government auspices promises results of great consequence: on one hand, it bids fair to make Manila a notable center of tropical and Oriental medicine, and to accomplish perhaps radical improvements

in the health and physique of the Filipinos themselves; in other lines, scientific investigations offer hope of new products and new industries of consequence as well as the betterment of old, and the more effective use of material resources in general.

Relatively an excellent state of public order has been reached, and that remarkably soon after the insurrection. This would not have been possible, were not the Filipinos in general a peaceable people. Of course, local outbreaks may be expected from time to time, from special causes, at least in the more backward and mountainous regions; and brigandage will not cease entirely until the archipelago is more fully peopled and developed.

The Moros and hillmen are problems by themselves. It can at least be said that we have already made more progress in getting acquainted with them and making them acquainted with us than the Spaniards did. Our advance among the headhunting communities of northern Luzon has been especially remarkable. It is not yet clear, at least to me, whether or not we are advancing with the Moros. At any rate, in the main issue, these problems must be left to time, contact with outside civilization, and the development of the Philippine archipelago.

Returning to the Christian Filipinos, while acknowledging their generally peaceful disposition, it must still be said that gratifying progress has been made in bringing about harmony and coöperation between them and the constabulary. This is especially notable in view of the fact that, as late as 1905, Filipino political circles were in a ferment over this question. Colonel H. H. Bandholtz, the present chief of the constabulary, deserves not a little of the credit. The question of public order under an alien government is intimately bound up with the securing of harmony between local and insular officials. Here, instead of undue concessions of local autonomy at the outset, the insurrection compelled a strict centralization. Perhaps, local authority was not sufficiently recognized; certainly local coöperation was not till lately secured in the degree necessary to cope with disorderly elements in the peculiar conditions of the Philippines. We are letting go some power in this line now to secure coöperation; and it seems quite probable that we should go somewhat further yet in decentralization as regards police matters. I am speaking now of the constabulary: the municipal police require more centralization, in the way of inspection at least, and closer coöordination with the police machinery as a whole, and this is a pending proposition.

For its reform of judicial procedure and the establishment of an independent judiciary the new régime in the Philippines has earned, and in most quarters has received, great praise. In grafting Anglo-American procedure upon Spanish substantive law, some mistakes were of course made, and conflicts of law and jurisdiction have developed. The time has come for careful and thorough revision of the substantive codes, as well as of the statutes that have accumulated in somewhat confused order since 1900. A committee of members of the Commission and Assembly and of outside lawyers now has this matter in hand. Various new codes have been drafted during the seven years past. Though there is some confusion existing, and there are some hiatuses of law and jurisdiction, as stated, there is no urgency calling for immediate remedy, and the need is—to repeat—for thorough, painstaking work, for which probably several years should be taken. The justice of the peace courts cannot be included in the praise of the superior judiciary in the Philippines. Reform here is, in the main, a phase of the improvement in local government which it is hoped time will bring.

There is some agitation in the islands for jury trial, and it found expression in the first session of the Assembly. It is, however, political in character; some Filipinos who have vague ideas about the workings of jury trial advocate it, because they suppose it to be an essential accompaniment of self-government and therefore desire it as a new "political right" for their people.

The American program of education in the Philippines, since it chiefly gives concrete expression to our policy there, has been the storm-center of discussion. It is still on trial; but two remarks of significance may be made: One is that those chiefly responsible for it are today firmer than ever in their belief in it; the other, that the Assembly in its first session, though talking much of reducing governmental expenditures, was more liberal with the educational department than was the Commission.

The chief problem of the present in this department is how to provide more adequately for primary instruction, in the face of the financial inefficiency of the local governments. The question is to some extent on a par with that of roads, already discussed; quite full supervisory power over schools was reserved to the central government from the first, but local taxes were expected to supply the wherewithal, in the main. In the absence of such a revision and rebalancing of the Philippine fiscal system as has just been advocated,

the central government must be yet more liberal in its aid of primary schools than it has thus far been, or it must openly accept the blame for making it impossible to carry out the program outlined in 1900 as adequately and as rapidly as the disposition of the people permits. Federal aid has been often proposed, and it is needless to say, would be welcomed.

The chief question in Philippine educational policy at present is how to coördinate the teaching of the native dialects with instruction in English in the primary schools. Initiated partly by Governor-General Smith and Director Barrows and partly by the Assembly, the late legislature adopted several measures looking to this end. The problem has various aspects and many difficulties. Let it not be concluded that this movement indicates the failure of the attempt to introduce English into the islands. Rather, it is a sign that the establishment of the educational machinery, the training of a corps of Filipino teachers in English, and the evolution of the course of study have progressed to a point where efforts need not be so largely concentrated on the medium of instruction. Let it be remarked—because many critics seem to labor under a misconception—that those responsible for the adoption of the Philippine educational program did not look forward to wholly supplanting the native languages with English. They did expect to give the different sections of the archipelago a common medium of communication, a trade language, a literary and scientific language. They are today more convinced than ever of the wisdom of this effort and more certain of its success—which, indeed, begins already to appear in various ways. But an adequate course of primary instruction must not wholly neglect the vernacular, and in what manner and how far to incorporate it is the pending question. Let it be added that the Filipinos are quite at sea when it comes to the practical aspects of the question, and all varieties of opinions and suggestions come from them. The Philippine language question must be left to time to settle. If there is a chance of the evolution of a single native language out of the many, and the development of a literature therein, the schools should and must eventually take the central place in that evolution. At present, the way is not clear, and, as stated, Filipino minds are hopelessly divided on the matter. But one thing seems certain: so far from the teaching of an outside language being permanently an obstacle to the development of a single native language, it offers the only practicable means whereby the unity necessary to such an evolution may be achieved.

Viewing the Philippine government as a piece of political machinery it will be apparent, from the way in which the question of centralization has constantly been coming up in this discussion, that a process of readjustment is still going on. Centralization versus decentralization is indeed the chief political question in the Philippines today. It dovetails, too, into the question of independence, which is the main topic of discussion. In fact, from whatever angle of view we approach the Philippine problem, we speedily encounter the necessity of dealing with the distribution of powers between central and local governments.

Historically, the very great administrative centralization under Spain has bred habits which compel its continuance in a great degree. On the other hand, relatively undeveloped as the archipelago continued to be till the close of Spanish rule, social and geographical influences made for decentralization and disunion; and this was only beginning to be broken down in the last years before 1898. Meanwhile, the state of affairs in the world at large, and in the Far East in particular, had come to render necessary even a closer political unity in the Philippines. In my opinion, the chief reason for branding the Aguinaldo government of 1898 impracticable was not in the risk of internal disorder so much as in the fact that the Filipinos as a whole were not ready for national unity and not a single one of their leaders was capable of organizing or administering, even as a dictator, that single government for the whole archipelago which they recognized to be necessary. This, quite apart from their still greater unpreparedness for instituting and working such a general government on republican lines, which they aimed to do. One may admit their capacity to run their communities, in a reasonably efficient way, on regional lines. But the conditions of the time demanded a Philippine government, not various Filipino governments. Hence, the argument that any community of people is capable of managing its own affairs, if only after a rough fashion, was not applicable to the situation of 1898.

The regional tendencies of the people were shown in the proposal for a cumbersome federal republic presented by various Filipinos to the Schurman Commission. That body laid great stress on the need for decentralization, urging a radical break with the experience and long-established precedent of Spain in this respect. It was on these lines that instructions were issued to the Taft Commission in 1900. The latter body did not go so far in this direction as authorized, very

early rejecting the idea of organizing departmental governments as a still further subdivision between the central government and the provinces and municipalities, also from the first centralizing to a considerable degree the direction of education, health, public order, etc. As has been indicated, greater centralization has been found necessary by experience, notably in fiscal matters and public works.

From the standpoint of economy and administrative efficiency, still further centralization is desirable. If these were the only ends in view, the provinces might well be abolished as political organizations, larger districts being substituted as mere administrative units of the central government. But here we touch upon other considerations. The American policy being aimed at the development of self-government by Filipino experience, it must often sacrifice economy and efficiency to Filipino political needs, even to Filipino prejudices where these rest upon historical, linguistic or other deep-seated conditions. This may be carried too far, of course, so that the real prime needs of the community as a whole are injured by an undue attempt to force or foster greater individualism politically and industrially. It is a question of compromise at every stage, and each phase of the problem should be settled by balancing evils against benefits.

It is not too hastily to be concluded that the Filipino local governments are not working well. For one thing, we should remember that we judge them by our own norm, while imposing on them in part our own methods, new to them. Moreover, that they have not had the resources to cope with new responsibilities is partly our own fault, as discussion of the land tax has shown. Here again we meet the need of fiscal reform.

While the tendency has been toward centralization, especially in the way of control and supervision of municipal government, at the same time there has been, most of all during the past two or three years, a very considerable increase in the Filipinos' effective political intervention in provincial government. As to their share in the central government, the inauguration of an elective lower house of the legislature of course marked an epoch. The Assembly in its first sessions has wholly disappointed the predictions that it would prove an obstruction to Philippine government; as yet, the prophets of disaster must admit that it has brought us to no *impasse*. On the contrary, it made an excellent record for dignified discussion, and a reasonably good record in legislation, considering that almost all its

members were for the first time facing the *practical* problems of government for the archipelago as a whole.

The prime argument for the Assembly was that it would act as a school in practical government, and that it is plainly doing. Second in importance was that it should serve as a medium for the expression of Filipino opinion, informing and checking the Commission as well as being informed and checked in turn; that, too, is an expectation already realized, and happily the two houses are thus far working harmoniously. It was of importance to have an Assembly even if it proved only a sort of safety-valve for the discharge of Filipino opinion. However, not every loud cry heard from the Philippines is the "voice of God," nor yet is it certain to be even the "voice of the people." Filipino parties are thus far hardly more than aggregations of a few leaders and their friends. Real party divisions will come about only as these leaders have to deal more with the practical questions of government and as the right to vote is earned by a larger proportion of the population.

The organization of parties which agitate about early or immediate independence, and the extremes to which the press goes in criticising government and officials, are not evidence of a change of policy since 1901 and 1902, but signs rather of progress under our general policy. The insurrection has receded into the background. The Filipinos sometimes still make of their liberty a license, but they are learning by use of their privilege how to criticise both more effectively and more fairly.

As the Assembly works into its place in Philippine government, the evolution of that government becomes still more interesting for the student of political science to observe. For the present, a tendency—which probably would otherwise appear, in imitation of the Latin countries of Europe—toward parliamentary or responsible government is effectively blocked by the fact that the final court of appeal in Philippine government is the sovereign power, acting through its agents at Manila and Washington. Hence, the Assembly has followed our own House of Representatives as to rules of procedure, committee organization, speakership, etc. One wonders what consequences are to flow from this diplomatically adopted program of imitation. For example, what will be the evolution of the office of speaker in the Philippines? He now looms as a powerful figure, and it has been the policy of Mr. Taft and Governor-General Smith to magnify the office.

The initiative in budgetary legislation was in this recent first session left to the Assembly, partly in compliance with the historically established prerogative of the lower house to originate revenue measures, partly as a leading feature of the diplomatic attitude which the Governor-General and the Commission adopted toward the Assembly. I believe a mistake was made here, however. In the final issue, the Commission had to take a firm stand on the matter of general appropriations and to enforce its own program. It would be simpler and better for the Commission to assume openly this responsibility which it must bear, anyway, in the last analysis. Let the budget be prepared, say, by the Executive Secretary's office, with approval of Governor-General and Secretary of Finance, one or both; then be passed upon by the Commission as a legislative body; then go to the Assembly as the program on revenues and expenditures of the appointed officers who represent American sovereignty and hold the final power in the islands; leaving conference between the two houses to adjust their differences. One advantage of this course is that it would set up in the Philippines a logical procedure in regard to the budget, instead of leaving it chaotic and uncoördinated as in the United States. This would set a precedent that, in case of the establishment of a future independent Philippine government, would help to make the transition easy, incidentally also fitting in well with a scheme of responsible parliamentary government, if that should seem desirable.

But, above all, it is unwise, I believe, to seem to concede, by mere forms, powers and privileges which we do not actually concede. We have sometimes made this mistake in the Philippines, just as on the other hand we have sometimes erred in not yielding readily enough to native customs or prejudices—all this quite naturally, unless one expects perfection in the art of compromise, which is government. It would have been better, for instance, to tell the Filipinos outright, when we inaugurated the classified civil service, that it was necessary to pay American employees more than Filipinos of the same grades, because of distance from home, risks of climate, cost of the strangers' methods of living, etc. Instead, we got at the matter by classifications and other indirections; and the results have been, unfounded complaint of injustice when the differences were discovered, and the setting of an unduly high wage scale for those Filipinos who have fitted themselves for the better positions. So, too, in some instances, we ought to have been more up-and-down about sanitary

measures. In some such cases, we should state flatly that we maintain our intervention in Philippine affairs because of the Filipinos' unreadiness to deal with them; the opposition will yield speedily to firmness, if only we are tactful and considerate in the actual administration of details. So, in this matter of the budget, it were better to have it clearly understood that the American element in government holds final power and responsibility, and will use that power so long as it considers its intervention in the Philippines necessary. Meanwhile, the members of the Assembly can acquire just as much practical knowledge of government through study and discussion of appropriations, and it is safe to assume that the Commission will meet their views and arguments in a fair and reasonable way.

Criticism of the body of Americans in the Philippine civil service has frequently overlooked the fact that, in the main, they are not a set of *supervisory* officers of superior rank. We have as yet no such trained men to draw from, even if we provided places for them in the islands. Doubtless, as already stated, a more efficient government, considered from the administrative point of view, might be attained by letting the Filipino communities follow more freely their own devices, putting above them a set of trained administrators, who should ask only for definite results and ignore methods in the main. We have adopted a much more difficult, but in final analysis a much more far-reaching program; and we must go to the very bottom, must reach the individual citizen and act directly upon him. The machinery set up is somewhat more cumbersome than in the other case would be necessary. In large part, the American employees thereunder perform routine functions, and are to be replaced by natives as speedily as possible.

For the superior places, the positions where initiative talent and constructive ability are needed, we have not always succeeded in getting as good men as are to be desired. The salaries are not too high, they are rather too low, for the right men; but it is a waste of money, as well as harmful on other accounts, to put mediocre men in any of these places. Most serious of all, the missionary spirit which our policy requires—presupposing, as it does, *coöperation* between Americans and Filipinos—is too commonly wanting among American civil servants in the islands. There seem to be two main causes for this: one, race-prejudice, which is stronger and more widespread among us than appears at home, the other, the extent to which a material standard of life prevails among us. One influence toward shortening

our present régime in the Philippines will be this failure to enlist enough Americans with the right spirit toward the work.

Nevertheless, we have progressed rapidly, and have gone a long way, in the last eight years in the Philippines. One would feel like predicting the ultimate success of our policy, in one form or another, were it not that any prediction about the immediate or the distant future in that part of the world is both risky and profitless. At least, it would seem that the policy already stands justified by events both within the archipelago and in that region of the world. There was, and is yet, in the islands especially, an American party advocating the "strong hand" in political management of the Philippines and the fostering primarily of their commercial exploitation. Most foreigners, and in particular the British who claimed to know the Orient and colonial problems, ridiculed our Philippine program—or what they supposed it to be—as conceived in bland ignorance and foolish sentimentality. Today, in the face of Japan's performances, of the signs of the times in China, and particularly in view of what is happening or about to happen in India—not to go to Persia, Turkey, or Egypt—should we not congratulate ourselves upon our course in the Philippines? We denied Filipino nationality for the moment, but recognized and encouraged it for the future. We did this, partly because the Filipinos were pressing their demands upon us, but most of all because we felt that we could not do otherwise consistently with American ideals. At present, the forces of history seem to be working to justify us.

REPORT OF THE COMMITTEE OF FIVE OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION ON INSTRUCTION IN AMERICAN GOVERNMENT IN SECONDARY SCHOOLS

"The next remove must be to the study of Politicks: to know the beginning, end, and reasons of Political Societies: that they may not in a dangerous fit of the common-wealth be such poor, shaken, uncertain Reeds, of such a tottering conscience, as many of our great counsellors have lately shown themselves, but steadfast pillars of the State."—MILTON, *Tractate on Education*.

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CHAPTER I

INTRODUCTORY

Some years ago a member of this committee gave a test in American Government to a class of seniors in the Engineering college of the University of Minnesota who were about to begin a short course in political science. The object of this test was to determine how much information about our government could be safely assumed and at what point to begin the instruction.

The results of this test indicated that this group of college men, who were about to enter positions of importance and assume responsi-

bilities in the engineering departments of our cities and in the business world, had only the vaguest and most untrustworthy information concerning even the simplest rudiments of our governmental system. It showed that their college instruction in political science must begin with the simplest elements, assuming no previous knowledge of the subject, if such instruction was not to be pitched above their heads.

The test opened such an interesting line of inquiry that it was repeated in three succeeding senior classes in that college, with approximately the same results each time. Finally, in the autumn of 1905, the same test was given to students in both academic and engineering colleges in fourteen different universities in order to determine whether the results obtained previously were symptoms of a local difficulty or whether they pointed to an ailment nationwide in its extent. This investigation showed conclusively that the difficulty, whatever it might be, was not local but national; and a little worse in the East than in the Mid-West. The results were presented at the Baltimore meeting of the Association before the section on Instruction in Government,¹ a department established in 1904 to deal with questions of this nature.

At the following meeting of the Association in Providence a committee of three was appointed to make a further investigation of the problem. This committee was enlarged to five at the Madison meeting by the addition of Prof. J. A. James of Northwestern University and Mr. James Sullivan, principal of the Marcy Avenue Boys' High School in Brooklyn, New York; and an additional year was allowed for the completion of the work.

The committee began work in January immediately after their appointment. The previous inquiry had shown the results from the instruction now given in the secondary schools among those students who reach the universities. It seemed that the next step would be to determine the amount and kind of such instruction actually being offered in our secondary schools, the preparation and experience of the teachers who are doing the work, the text-books and libraries available for the purpose.

¹ Schaper: What do Our Students Know About American Government Before taking College Courses in Political Science? *Proceedings of the American Political Science Association for 1905*. Also published in the *Journal of Pedagogy*, June, 1906.

The country was divided into three districts for the purposes of this investigation, referred to in this report as the Eastern and Mid-Western, the Southern and the Western. The Eastern and Mid-Western section embraces the states north of the Ohio and east of the Mississippi. The Southern includes the States south of the Ohio and Mason and Dixon's line and those States west of the Mississippi from Missouri to the Gulf. The Western section includes all the States west of the Mississippi excepting Missouri and the States to the south. This plan gave to each member of the committee his own State and the section to which it belongs for study, which proved to be a good working arrangement.

The following circular letter and blank were prepared and sent to selected lists of secondary schools in each section.

THE AMERICAN POLITICAL SCIENCE ASSOCIATION

COMMITTEE ON INSTRUCTION IN GOVERNMENT

WM. A. SCHAPER, UNIVERSITY OF MINNESOTA

ISIDOR LOEB, UNIVERSITY OF MISSOURI

PAUL S. REINSCH, UNIVERSITY OF WISCONSIN

Dear Sir: The American Political Science Association, at its third annual meeting in Providence last December, appointed a committee of three to investigate the instruction given in American Government (Civics), in the secondary schools of this country, to make recommendations for improving such instruction and to report at the Madison meeting next December.

This national association was founded in New Orleans in 1903 and now has an active membership of about 400, including practically all of the political scientists connected with our colleges and universities, many leading jurists, attorneys, publicists, and administrative officials. Its purpose is to promote the scientific, unbiased study and investigation of the problems of government and of politics. It publishes an annual volume of proceedings and a quarterly magazine, *The American Political Science Review*.

We, the members of the committee, ask for the earnest cooperation of the superintendents, principals and teachers in our secondary schools in this effort of the association to bring the instruction in government up to the grade of efficiency which its present importance demands.

Is it not a curious fact that though our schools are largely instituted, supported and operated by the government, yet the study of American Government in the schools and colleges is the last subject to receive adequate attention? The results of the neglect of this important branch of study in our educational institutions can easily be seen in the general unfitness of men who have entered a political career, so that now the name of statesman is often used as a term of reproach, and the public service is weak, except in a few conspicuous instances. Are the schools perhaps to blame for the lack of interest in politics shown by our

educated men until the recent exposures arrested the attention of the entire nation?

We think the best place to begin the work of regeneration and reform is in the American secondary schools and colleges. Here we find the judges, legislators, diplomats, politicians and office-seekers of the future in the making. Here are the future citizens, too, in their most impressionable years, in the years when the teacher has their attention.

The first thing to do is to collect accurate, reliable data as to the extent and nature of the instruction now given in American Government (Civics) in our secondary schools. In this way we hope to call public attention to the subject and call forth suggestion, and recommendation, useful to school officers and teachers.

To that end we ask you to carefully fill out the inclosed blank as promptly as possible and return it together with such other information, bearing on this investigation, as you can furnish to the undersigned. We shall be glad if you will have your teacher of American Government send us criticisms and suggestions. The results will be incorporated in a report which we hope to make available to every one interested in the teaching of government in our schools.

Your coöperation is absolutely necessary in making the report a success. Will you help us in this undertaking?

THE AMERICAN POLITICAL SCIENCE ASSOCIATION

COMMITTEE ON INSTRUCTION IN GOVERNMENT

WM. A. SCHAPER, UNIVERSITY OF MINNESOTA

ISIDOR LOEB, UNIVERSITY OF MISSOURI

PAUL S. REINSCH, UNIVERSITY OF WISCONSIN

City State Date
Name of the School Street
Superintendent Principal
Time given to American History, in weeks In which year is it given?.....
In which term? Recitations per week?.... Is the subject required?....
or elective? How many students took the course in 1902?.....
1903? 1904? 1905? 1906? 1907?
Time given to American Government (Civics), in weeks?..... In which
year is it given? In which term? Recitations per week?.....
Is the subject required? or elective? How many students took the course
in 1902?..... 1903? 1904? 1905? 1906? 1907?

Indicate briefly the nature of the course in American Government (Civics),
the ground covered, method of presentation, texts used, etc. Is it a separate
course or a combination with American history? Is the work confined to a study
of the constitution and text?

What reference books have you in your library on American Government?
Name five of the best of these.....
.....
.....
Have you copies of your State constitution?... Of the United States Constitution?
.....State statutes?.....Federal statutes?.....Any government
reports?.....
Name of teacher giving the course in American Government.....
Other courses taught by her
Her training for the work, i.e., courses taken in it

.....
Experience in teaching the subject, in years

Do you favor teaching American Government as a separate subject? Why?.....

How can the instruction in American Government be made more attractive and efficient?

The committee invites criticisms and suggestions.

WILLIAM A. SCHAPER,
University of Minnesota, Minneapolis.
ISIDOR LOEB,
University of Missouri, Columbia.
PAUL S. REINSCH
University of Wisconsin, Madison.
Committee

In the Eastern and Mid-Western section 580 blanks were sent out and 217 replies, or about 38 per cent, were returned. In the Southern about 600 blanks were sent out and 203 replies, about 33 per cent, were received. In the Western section, there were 447 blanks sent to high schools and 241, or 54 per cent, filled out and returned.

The total number of blanks sent out was 1627; total replies received, 661, or about 40 per cent, a fair average for an inquiry of the kind. The blanks in nearly all cases were filled out with care. Many are very full and contain personal observations and comments of especial value in determining the actual situation. In a number of instances, we found a personal letter, a printed course of study, or a syllabus inclosed, showing the interest taken in our inquiry. On the whole the replies give a very good insight into what the schools are doing for American Government and what the high school men think upon the subject throughout the United States.

CHAPTER II

INSTRUCTION IN AMERICAN GOVERNMENT AS IT IS NOW GIVEN IN OUR
SECONDARY SCHOOLS

The inquiry of the committee centers about five main factors.

1. Number of students enrolled and the time given to the subject.
2. The nature of the course and the plan of instruction.
3. The teacher.
4. The text-book.
5. The school library.

ENROLLMENT IN, AND TIME ALLOWED THE SUBJECT

An effort was made to secure full and direct information regarding the time spent in the study of American Government and also in the study of American History, the term and the year in which these studies are taken, number of recitations per week, whether required or elective and the number of students enrolled in each branch during the preceding five years. But a glance at the returns makes it apparent that where figures were called for, requiring the consultation of school records, a large number of our correspondents simply gave estimates. How wide of the mark the guess of the superintendent or principal may be in an individual instance is shown by one case which was checked up. The principal of the school had given some figures that were on their face a mere guess and a bad one at that. A letter directed to the special teacher of the subject in that school brought out the difference that may exist between facts and fancy. The two reports run as follow:

	1902	1903	1904	1905	1906	1907
Principal:						
In History.....	200	250	229	250	275	325
In Government.....	125	200	250	275	300	400
Teacher:						
In History.....	Cannot answer	correctly	for preceding			70
In Government.....	years					78

Judging from this experience, the estimated enrollment figures are quite useless and for that reason they were discarded by the committee.

The only figures of enrollment in different branches of study that are available are those of the United States Commissioner of Education. We shall fall back on these and select, for our purpose, the reports for 1902 and the two latest available, those for 1905 and for 1906 as covering approximately the years covered by this investigation. Let us consider the enrollment figures for five selected subjects; a mathematics, a science, a language, and two social sciences.

COURSE.	1902		1905		1906	
	Enrollment	Per cent.	Enrollment	Per cent.	Enrollment	Per cent.
American Government (or Civics).....	110,921	20.51	122,186	17.97	126,361	17.48
American History.....	216,403	39.30	277,864	40.88	306,345	42.39
Algebra.....	309,164	56.15	390,893	57.51	419,495	58.06
Latin.....	275,674	50.17	341,245	50.20	363,191	50.24
Physics.....	98,154	17.48	106,430	15.66	110,345	15.26

These figures bring out very clearly how little attention the high school youth devote to the study of our government. Of course it is necessary to interpret statistics of this kind and read them with care to get at their real meaning. For instance, it does not follow from these tables that 50 out of every 100 students who go through our high schools study Latin as compared with 17 or 20 out of every 100 taking American Government. These figures simply indicate the total number and the percentage of the whole enrollment of students in our high schools who attended the classes in a given subject in a certain year. In any subject, like Latin, where there are first, second, third and even fourth year classes, the "percentage of enrollment" is larger than the ratio of different individuals who take the subject during the course. Since American Government is always a year subject or less it follows that the "percentage of enrollment" in this case is the same as the ratio of different individuals who pursue the subject. It is true of course that the percentage of enrollment approximately expresses the relative amount of attention which a given subject receives. Applying this measure we see that the amount of energy put forth by our high school youth to comprehend the language of the ancient Romans is about three times the total amount devoted to the comprehension of our vast and very intricate governmental and party machinery. A still more signifi-

cant thing is the fact that less than 20 per cent of the students enrolled in our high schools today are pursuing the subject, and the percentage is yearly decreasing. There are large cities in this country where American Government is not taught at all in the high schools. One of these has been one of the worst boss ridden and misgoverned cities in the land. Is it possible that one condition is the cause of the other? Even where the subject is taught in our large city high schools in many cases little or no attention is given to city government.¹ It seems very singular that in our high schools where the most fortunate tenth or twentieth of our youth is being educated at public expense, the subject of government should receive so little attention and be among the poorest taught in the entire curriculum. In the field of business undertakings we may be an exceedingly developed and practical people, but in the administration of government, including the educational branches of it, there still is much to be desired.

Let us now turn to the topics reported upon by our correspondents. Here we shall find their statements ample and reliable. We shall first consider the year in which American Government is offered.

The practice is not uniform. In some schools it is given as a freshman subject, in some as a senior study, in still others it may be offered to sophomores or to juniors as choice or circumstances may have determined. There is a marked tendency, however, to regard American Government as a senior study and to place it in the last term of that year, following American History. This preference is especially marked in the East and Mid-West, where, of the schools reporting, 129 offer the subject in the fourth year, 21 in the third, 15 in the second and 28 in the first. In the West, of the schools reporting, 135 offer it in the fourth year, 54 in the third, 26 in the second and 36 in the first. In the South, the tendency is not so marked, but it exists. The figures are: fourth year 48 schools, third year 19, second 17 and in the first year 36. It should be noted that in some schools the subject is offered in more than one year.

It is also essential to know the number of recitations devoted to the subject per week. In the West, most of the schools reporting give five recitations per week to it. The figures are 215 schools 5 recitations per week for about 18 weeks; 8 schools, 4; 3 schools 3;

¹ Fairlie: Instruction in Municipal Government. See Detroit Conference for Good City Government, 1903.

5 schools 2; and 5 schools 1. The tendency is the same in the East and Mid-West, 125 schools reporting 5 recitations; 41 schools 4; 11 schools 3; 14 schools 2; and 4 schools 1 recitation per week. In the South, of the schools reporting, 106 follow the five recitation plan, 5 report 4 recitations; 8 report 3; 5 report 2; and 2 only 1. Those schools devoting only one or two recitations per week to the study of government do not attempt more than some lectures or general exercises.

REQUIRED OR ELECTIVE

There is no uniform practice as to requiring the subject for graduation or of making it an elective. In the West, 129 schools report it as a required subject in all or most of their courses, but 100 leave it open to election. In the East and Mid-West, the subject is required in 122 schools reported and an elective in 70. In the South, the subject is generally required for graduation where it is taught at all. Of the schools reported 104 make it a required subject and only 13 offer it as an elective. The largest number of elective subjects are of course found in the curricula of the city high schools of some size. In the smaller schools, where the teaching force is limited, no great variety of subjects can be offered. Therefore, if American Government is taught at all in a small school, it is apt to be required for graduation.

In regard to the term in which the subject is offered, the practice is also varied. In the West, 65 schools put it in the first term, 116 in the second and 24 in both. In the East and Mid-West, 41 schools favor the first term, 51 the second and 62 present the work in both terms. Some schools still have the three term system. In 21 of these schools, the subject is offered in the second term. In the South, 23 schools give the subject in the first term, 51 in the second and 41 in both. There is a tendency to put the subject in the second term of the Senior year so as to make it follow the work in American History.

PLAN OF INSTRUCTION

The relation of the instruction in American Government to that in American History seems to be the most vital question that has arisen. The committee therefore made a specific inquiry as to this relationship, including the plan actually followed as well as the personal preference of the teacher or principal reporting. The opinions expressed and the arguments advanced may be somewhat diverse

when taken individually, but when viewed in the mass certain marked preferences appear.

There are several possible conditions that may exist. First, the work in American Government may be given as a separate and distinct subject, either immediately following the work in American History, immediately preceding it or in no intended sequence whatever. It seems to be still an open question with the high school men in what order the two subjects should be taken up. Some hold that a knowledge of government is essential to the study of our history. A larger number hold that it is both better pedagogy and better logic to approach the study of government after having studied history. In practice the schools are divided, with a slight preference for the latter plan.

Secondly, it is possible to give instruction in American Government in a course in American History. This plan will be referred to in this report as the combination course. It will be interesting to call the roll of the schools on this question. In the West, 153 schools reported a separate course on government, 47 a combination course and 40 failed to be specific in their statements. In this group of states, the teacher or principal in 158 schools favor the teaching of American Government as a distinct subject; only 30 express a preference for a combination course with history, 54 not expressing any opinion.

In the Southern States, 85 of the reported schools teach government as a distinct subject, 53 combine it with history. The teachers or principals reporting preferred the separate course in 111 instances; only 33 were in favor of the combination course.

In the Eastern and Mid-Western section, 98 schools report a separate course and 74 the combination course. The teachers or principals reporting prefer the separate course by 110 to 42.

The problem then seems to be gradually solving itself. The consensus of opinion and the existing practice are clearly in favor of teaching American Government as a distinct branch of high school study. The arguments advanced to support this position are in many cases very earnest and forceful, and far outnumber those in opposition. The general adoption by our high schools of the best plan of giving instruction in government is a matter of such moment to the future citizenship of this country that the discussion of this question should be made public, though it may have but a trifling influence in the shaping of a correct professional opinion which is now under way. Liberal quotations will be made from both sides which will

tend to indicate the nature of the course preferred and the arguments advanced in support of the plan. The position of those who favor the combination course will be taken up first.

THE COMBINATION COURSE

Andover, Mass., reports: "At its proper place in the course, ten or more lessons in Civics are given. Thereafter in the course, such special lessons are introduced as are suggested by the facts under consideration."

Washington, Iowa: "We combine our American History and Civics. The first semester we devote to the history down to 1789 and to a detailed study of the Constitution including the first ten amendments. The last five amendments are studied in connection with the history from 1789. The last five weeks of the second semester are given over to a brief survey of State and local government. The history texts used are Hart, McLaughlin and Channing. The civics text used is McCleary's. The second semester of history furnishes abundant material for study of the application of clauses of the Constitution. We do not confine ourselves to the text and the Constitution."

San Diego, Cal.: "My present plan is as follows:

"Colonial and local Government as found about 1700 or 1760, State Government, Rev. period; general plan, development from colonial governments and special influence of eighteenth century political ideas. Taught by informal lectures. Articles of Confederation, Fiske's Critical Period. Constitution: studied from documents with comments and questions by class and teacher; closely connected with study of Federalist Period, to which large attention is given. Through 1876, there is continued reference to the Constitution to find authority for action taken. Readings from Bryce at appropriate points. A few weeks allowed at end of course for review showing development of Constitution, departments of government, local government, and relation of federal to State governments.

"The civics can not be understood without the historical setting, nor is the history complete unless changing institutions are shown in connection with political or economic conditions. I am speaking of high schools, where only four years at most are allowed for history. A course giving more detail as to actual government might profitably enough follow a full year's course in American History and Government."

Eveleth, Minn.: "In connection with the history the making of the Constitution can be best studied. Constant reference can be made to constitutional questions as they arise. After completion of historical work, constitutions of State and nation can be studied with interpretation and development for the sake of logical unity.

"I should require a thorough elementary course in the eighth grade as well as an advanced course for high school seniors. A course in modern history with special emphasis on English government should be a prerequisite to the latter. Use of current magazines and debates on questions of government enliven the instruction."

Tacoma, Wash.: "The course is combined with American History. We bring in definite text-book work at times when appropriate for the history story. We try to make the course practical by many illustrations and lectures and by tracing the work of our own representatives in the government, State and city. I. Civics naturally belongs with the study of history. II. American History should be a year course, for senior work, and civics should be a senior course. Unless the subjects are combined the year becomes crowded. III. Civics as a separate course must repeat much of the history work."

The Superintendent of this school sent the following letter:

"The blank which you sent I have filled out Their plan does not agree with mine, although I know that my plan is not the popular one. I strongly insist that the only way to get good results in the study of political history and civics is to make it a separate course from American History, letting it follow the latter. The teacher, always with somewhat meager training, will emphasize the usual phases of American History. . . . I believe that we should have especially trained teachers of political science in our schools."

Dubuque: "We give the course in civics in combination with American History. We give about one-third of the total number of weeks (38) to civics. We attempt to correlate the two quite closely, but do not succeed very well for reasons stated in later answers. The history work demands so much time that civics is almost necessarily very much slighted. We use civics only as a better elucidation of certain phases of our history, much as we should desire the contrary. We use James and Sanford's text and Weaver's Iowa. We do practically nothing in elucidating civics as a subject separate from history. There is not due to desire but to necessity if history is to be developed properly.

"I find it hard to connect closely history and civics. As an adjunct

to a course in American History, one approaches civics from the point of view of constitutional history, almost inevitably, if close correlation is desired. Thus one neglects or finds it difficult to relate in the mind of the pupil governmental institutions and processes to the life with which the pupil is familiar, or to social needs. One fails to develop in the pupil a grasp of or a sense for the duties of citizenship or the meaning of political life. One can hardly accomplish this by teaching constitutional history. With most of our history texts one cannot present local and State governments and keep in touch with the history. We have no material to trace the development of political institutions through the colonial period. If given by the teacher it will bear very little relation in the mind of the pupil to the work of the course, rather, isolated bits of information. Then, too, the presentation of American History to high school seniors is sufficiently difficult, without attempting to present something which should be approached from a different point of view. . . . To present history and civics from different points of view must result in failing to get results desired."

Some time after receiving our circular a member of the board wrote:

"I send you a copy of our latest course of study. You will see that we have made a beginning in following your suggestions and we have given the study of American Government six months in four of the courses. . . ."—Dubuque, Iowa.

Great Falls, Mont.: "Does not favor a separate course in American Government because of argument found in the report of the committee of seven."

Butte, Montana: "The course is a combination with American History; one recitation weekly is devoted to civics. . . . The development of our political institutions can best be studied in connection with American History, presenting the latter subject from the constitutional aspect largely."

ARGUMENTS FOR THE COMBINATION COURSE

Let us now examine the true nature of this combination course and the leading arguments advanced in its support. The arguments are:

1. Since American Government is largely an outgrowth of American History both should be studied simultaneously.
2. The two subjects should be taught together to save time and avoid the repetition of history.

3. The subject of government when taught apart from history is abstract and very general, therefore uninteresting to high school students

4. Because of the recommendation made by the committee of seven of the American Historical Association.

The first statement contains a pedagogical fallacy. It does not follow that because government is largely an outgrowth from history that a boy in the high school should study them at the same time. The steam engine is also an outgrowth from history, so is the alphabet. No teacher would therefore contend that these must be studied in connection with history to be understood. The study of origins in all the sciences is difficult and often disputed ground. It is a particularly complex problem in political science and certainly is not the easiest nor the most natural approach to the study of the present organization and working of government. There is a vast amount of history that has not the remotest connection with government. Then there are many features of our government that can be best taught by comparison with contemporary foreign governments. No teacher who is properly equipped to teach the subject would think of injecting a study of modern city problems into colonial history. He would go to works on municipal government in Germany, France and England to find the proper setting for his subject. So with a large number of the most vital topics taken up, like the budget, the committee system, party organization and practice, the relation between executive and legislature, the courts, etc. In fact, history and government are two very extensive and entirely distinct fields of study. They have their own departments in our most developed universities, and distinct national associations and publications. If the two lines of work are pursued separately elsewhere, why should they be joined in the high school? Either is difficult enough for the matured college student, why, then, attempt to present them to the high school boy, jumbled together? A familiarity with American History, yes, with European History is necessary to the proper appreciation of American Government. But that he is supposed to get and can best get from his work in history. The student follows this order in the study of English Literature, where a knowledge of history is even more essential to obtain a good grasp of the subject. What teacher of English Literature would attempt to teach it in connection with English History? What would we think of a high school teacher of English who described his course in some such

way as this: "We teach literature with English History. We give ten or more lessons in the subject and reserve two or three weeks at the end of the term for review. At appropriate points we stop to read from Shakespeare." We are permitting something equally foolish in the study of government in a large number of our city high schools.

Of course, no one would deny that there is a close relationship between history and political science. But this close relationship should not blind us to the great differences in subject matter, method, and aim, which distinguishes these two sciences. With the ultimate relations between them, the high school teacher and pupil has little to do; and as the purpose of the high school course is primarily a practical one, that of preparing young people for taking their place in the community and leading useful lives, the relations between history and political science which interest the investigator and student, are, in this particular connection, quite unimportant. In the historical courses of the high school there is to be imparted to the student that background of culture and historical experience which ought to be the common heritage of people of some education. To inject into courses of this kind constant applications to present day life and institutions would be to destroy the unity and to bend them to alien purposes. In the words of Burkehardt, "It is not the purpose of history to make us prudent for a certain occasion but to make us wise for all time."

The course in American Government, on the other hand, ought to deal distinctively and primarily with the political life by which the pupil is surrounded. It ought to train his powers of perception by teaching him to see for himself the facts of political life. It of course remains true that every institution is an aggregate of precedents, of purposes fixed and made definite through continued action, but it is entirely beyond the possibilities of a high school course to treat of institutions fully and in a satisfactory manner from the point of view of origin and development. And in as far as these are dealt with they ought to find their place in a logical and connected account of the political action and institutions of today, if they are to make any cumulative impression. It follows from all this that the two courses, history and government, differ essentially not only in subject matter, but in point of view and method. The materials for the study of government are not merely printed accounts or documents of past history, but they include among written material that

mass outside of the accounts in text-books—a multitude of laws, constitutions, ordinances, political and legal papers, ballots, etc., all of which an intelligent citizen ought to be able to use for himself to a certain extent. The materials of study include, moreover, the political facts themselves,—the fact of voting, of courts, of juries, of police, of various municipal services, of official action, etc. The method of political science or the study of government ought therefore to approach more nearly that of the natural sciences in the training of the power of observation exercised directly upon objects and activities accessible to the mind of the student.

The second argument, that government should be taught with history to save time and a certain repetition of history is its own best refutation. Why is there no time in a high school supported by taxation to teach directly and in the most efficient manner the government of the city, the State and the nation, the organization of political parties, their functions, parliamentary procedure, the duties of citizenship? The youth, who are our legislators, judges, executives, party workers and citizens in the making, are in these schools primarily for the very purpose of being taught these things.

They are in their most impressionable years, too, when the teacher still has their attention. Is not this the American teacher's opportunity? In our superabundant optimism and neglect of things governmental we are still letting this chance slip through our hands.

Is it more important that the future American citizen should be able to translate the language of the ancient Romans and talk learnedly of Ephors, Areopagus, Prætors and Consuls than that he should know how our candidates are nominated, how our citizens are governed, how our senators are elected, how our juries are drawn and how our national and State courts are constituted? If there is no room for these things in our high schools we had better make room for them at once.

As for recurring to some topics treated in history in connection with the course on government, there can be no harm in that. The repetition may help to impress on the youthful mind a few of the thousand incidents that come up in a course on American History and fix them permanently in the memory through the new association thus established. It is exactly this kind of correlation that we want.

The third argument is really directed against the threadbare stuff that formerly was taught under the meaningless name of "Civics." To most of those who quit school some years ago, civics calls to mind

the conning of an old style manual and learning the constitution by rote, under the direction of a teacher who knew what was between the two covers of the text-book and could recite the constitution, word for word, but who had no training in actual government.

The subject had no connection with the events that were transpiring about them; what the government then was and what it was undertaking, was an unknown world. They were taught book learning, pure and simple. It is a curious fact that more than a score of high schools report that they are still using old fashioned manuals. In another investigation made for the National Municipal League some years ago, one high school in a large city, 500 miles from Ohio, reported that no work in city government was given, but some lessons were given instead on the constitution of the State of Ohio. Have we here an extreme case of excessive State pride in the teacher or have we here an illustration of a teacher, who being wholly unprepared to teach his subject, taught the boys the only constitution he was familiar with? In either case, the work of that school in government was farcical. It is high time that we abolish the out-of-date manuals and the lifeless name of "civics" itself, and the popular prejudice which it has engendered against school instruction in government, and secure teachers trained in political science who can present the subject of government as a living, working reality. When properly taught American Government is a subject of absorbing interest to high school students. It offers splendid opportunities for exercising judgment, for character building, for civic enlightenment, for giving a start to those who wish to prepare themselves for the public service and for teaching a score of other things in which every American community needs an uplift. If the high school does no more than interest its boys in reading Bryce's *American Commonwealth* it is doing a real service to the future citizenship of our republic.

The last point made by those teachers who favor a combination course, is that the committee of seven advised it. We must give due credit to that distinguished committee of history teachers for awakening in our secondary schools a proper appreciation of the value of instruction in history. There is no doubt that the committee did its work ably and exhaustively, and has been justly regarded as an authority on the subject of teaching history. Time has shown, however, that in their recommendations regarding instruction in American Government they were not so fortunate.

Let us examine these recommendations and note the effect they

have had on the building up of the course on government in our secondary schools. On p. 81 of the report under the title "Civil Government" we find these statements:

"Much time will be saved and better results obtained if history and civil government be studied in large measure together, as one subject rather than as two distinct subjects. . . . What we desire to emphasize is the fact that the two subjects are in some respects one, and that there is a distinct loss of energy in studying a small book on American History and afterward a small book on civil government, or *vice versa*, when by combining the two a substantial course may be given.

"In any complete and thorough secondary course in these subjects there must be, probably, a separate study of civil government, in which may be discussed such topics as municipal government, State institutions, the nature and origin of civil society, some fundamental notions of law and justice, and like matters; and it may be even necessary, if the teacher desires to give a complete course and command the time, to supplement work in American History with a formal study of the Constitution and the workings of the national government. . . . What we desire to recommend is simply this, that in any school where there is no time for sound, substantial courses in both civil government and history, the history be taught in such a way that the pupil will gain a knowledge of the essentials of the political system which is the product of that history; and that, where there is time for separate courses, they be taught, not as isolated, but as interrelated and inter-dependent subjects."

In the omitted sentences, the committee avows that its intention in making the recommendations regarding government was not to minimize the effectiveness of the instruction in that subject, and then gives reasons for the combination course.

These quotations from the report show that the committee did not aim to solve the problem of the course in government, but undertook to adapt it to the needs of instruction in history. The language of the report on this subject is hesitating and apparently contradictory. In one sentence there is an admission that a "sound, substantial course" in "Civil Government" can be given where the teacher takes the time; in another, the report comes dangerously near maintaining that it cannot be done in a course apart from history.

The committee also admits that even when the combination course is given it will be still necessary to teach some topics in a separate

course on government. While the committee doubtless did not intend to discourage the separate course in government, many teachers gained such an impression from reading the report and were influenced by it.

It may safely be assumed that the report did not at the time, and it certainly does not now express the unanimous opinion of the American Historical Association on the relation that should exist between history and government in the high schools. It is very doubtful if it even reflects fairly the majority opinion of that association at the present time.

Two committees of the American Historical Association are investigating this question again. One of these committees, the one on the teaching of history in the elementary schools, is to report at the present meeting of the Association in favor of more instruction in government throughout the grades from the fifth up. The chairman of that committee and one other member are members of your committee and in full accord with our report.

There is also a committee of the New England History Teachers' Association, reporting on the question this fall. Their aim is to prepare an outline for the work to be given in history and civics.

The North Central History Teachers' Association at its meeting in 1905 discussed the question as to whether American Government should be taught apart from history. There were strong advocates on both sides. Finally the matter was assigned to a committee for investigation. The report one year later was clearly a compromise. It advocated separate instruction in government for certain selected topics. The other topics enumerated were to be treated in the course in American History. The History Section of the Wisconsin State Teachers' Association issued a report the same year taking much stronger ground and recommending that American Government be taught as a distinct subject following American History in the fourth year of the High School course. Some of the members of the committee which drew up this report also served on the committee of the Central History Teachers' Association. The language of the two reports is identical in many places.

A committee of the People's Institute in New York is also enthusiastically advocating the introduction of adequate courses on government in the schools of that city.

In the ten years that have elapsed since the report of the committee of seven was published, there has been remarkable progress made in

the development of the literature and of the university courses of instruction in political science. It was not until six years after the committee's report appeared that this, the first national association to promote the interests of political science, was founded in this country. After the developments of the past ten years we see more distinctly the place that the instruction in government ought to occupy in the curricula of our schools. There can be no doubt that the committee's recommendations do not tend to improve the instruction in government; on the contrary, there is evidence that they did "diminish the effectiveness of the instruction in the subject," just what the committee itself feared and cautioned against.

We can see from an examination of the outlines of the combination courses, that are being offered in consequence of these recommendations, what trend the instruction in American Government has taken. The quotations given from those outlines fairly indicate what is being done in the combination courses. In most instances the teachers present in these combination courses, American History as it is commonly taught, with a brief study of local government in connection with the history of the colonies, a few lessons on the constitution in the constitution-making period, and then some hurried lessons here and there on special topics like the speaker, the veto power, etc.

We cannot hope for anything but the merest botch work from such plans of instruction. The reports show very clearly where the main difficulty lies with the instruction in government in such schools. It is simply that the teacher is not properly trained in his subject. At best, he is a person who is a special student of history with no experience or schooling in government. His chief interest is in history. He brings to the study of government his historical point of view and neglects present day issues, administrative problems, and methods, new legislation and a study of local conventions, courts, legislatures and other governmental bodies in actual operation. To the beginner the natural approach to the study of government is not the historical. The high school boy does not care to be taken back to the history of the colonies in 1760 to get a running start for the study of the local police court, the fire department or even of the local sheriff. He is much more interested in seeing the local court trying a real case, examining the forms used, witnessing the impaneling of a jury and seeing the sheriff receive his commands from the judge. In short, it is through the observation of local governing bodies actually at work that the beginner's interest is awakened in the study of government.

It is most certainly not through research in the musty records for the origins of present day organs of government that the teacher will get the boy's attention. The past is a vague unknown to the beginner. It must be made to live again in the imagination through the observation and study of the existing reality. A far more natural and ready way of introducing the study of Government is through the study of local organs. This cannot be done in a course in history. There is no time for such work in that course, and it has no proper connection with it. No doubt a little constitutional history and some facts regarding the historical origin of governmental departments and policies, such things as are often taught in those combination courses, may well be included with a course in American History. But such work ought not to pass for instruction in Government. This country cannot afford to be content with work of that sort in our high schools in the teaching of American Government.

The combination course was not designed originally, nor is it now being used primarily to give instruction in government. Its purpose was to save time for more instruction in history or else to increase the interest in history through the introduction of something that had more of a practical bearing on the life of the people. One needs only to glance through the reports of these high school men to see that this is the case. It is stated in so many words in many of the reports. The committee of seven also says on p. 84: "If one does not pay attention to such subjects as these (the process of impeachment, the appointing power of the president, the make-up of the cabinet, the power of the speaker, the organization of the territories, the adoption and purpose of the amendments, the methods of annexing territory the distribution of the powers of government, and their working relations) in the study of history, what is left but wars and rumors of wars, partisan contentions and meaningless details?" May we not reply, is it our primary purpose to promote the development of history, or to develop the American boy and girl and fit them for their citizen duties and responsibilities?

Finally, the best arguments against the combination course are given by the teachers who have actually given the plan a trial. The best and fairest statement of the case was found in the report from Dubuque, which is given in full on a preceding page. This is only one out of a great number that might be cited. The figures previously given also show clearly that there are many teachers in all three of our sections who personally prefer to give a separate course in Ameri-

can Government, but the curriculum still compels them to give the combination course. This investigation indicates clearly that the high school men generally regard the combination course as being a failure. It calls for a new text-book, but it will require the genius of a Burbank in the field of history to produce such a hybrid text and make it flourish.

THE SEPARATE COURSE

To present an adequate summary of the reports favoring the separate course on American Government is a difficult task. The material is too bulky and varied to admit of being condensed into a few pages without sacrificing some of the best portions. However, among the statements found the following are fairly typical:

Haverhill, Mass.: "Though national government may be considered in connection with history, local government needs separate study."

New Bedford, Mass.: "American Government should be second to no subject in the secondary school curriculum."

Northampton, Mass.: "The combination with history allows a very insufficient treatment of civics, or else is very forced and unnatural." The greater part of civics has no more relation to the subject of history than has English Literature."

Fitchburg, Mass.: "As pupils should know their government in the flesh and blood, not only in the ink and paper, they should attend caucuses, polls, and conventions and rallies.

This is carried on in the Fitchburg High School. The citizen of tomorrow is thus made familiar with the privileges when they come to him. The city clerk gives a talk on the various kinds of business done in his office, etc."

Ithaca, N. Y.: "We are not able to serve two masters, one is sure to be overlooked. No one can do two things at once continuously and have both successful."

New York City: "Comparatively few of the topics in government can be united with the history course without breaking the unity and logical development of the latter. The problems in city government have grown out of very recent conditions that are often of larger scope than even the United States."

Syracuse, N. Y.: "American Government should be taught separately particularly in the larger cities, where municipal questions are a burning interest. Pupils ought to know what the city adminis-

tration and State government are trying to do; if they were to study civics only in connection with American History, there would be little opportunity for them to study these branches of government."

Sunbury, Penn.: "The teacher of history is not likely to regard the constitution as a thing of the present and future so much as a thing of the past."

Susquehanna, Penn.: "Our first duty is to make good citizens. For this reason, the state supports the system of public education, and no one can be a really good citizen who is not interested in its government. No one is interested in anything of which he is ignorant."

Ardmore, Penn.: "The American school fails utterly and disastrously if it neglects to give instruction in the fundamentals on which depends the preservation of the State. Neglect is suicidal."

Cleveland, Ohio: "If studied in connection with something else, American History, for example, that something else is likely to receive the lion's share of study and discussion. Years ago this was tried in this school and was a failure. Neither was well done. The attempt to teach two subjects at the same time is pretty sure to result in failure."

Columbus, Ohio: "American Government should be taught as a distinct subject and be required work for every school in America; first, as the most essential basis of intelligent and conscientious citizenship; second, as the basis for a broader, deeper interest in life for the pupil himself."

Lorain, Ohio: "No good teaching can come about unless the objective point is clean cut and appreciated by all pupils. History and civics are not the same in point of view or matter."

Chicago: "The combined course is a poor substitute for the special one year course that we had until five years ago. I know of nothing that gives better results or awakens more interest. It ought to have three hours a week per year, or five hours for half a year in a high school.

It gives mental training above that of any other subject I have taught. It gives an understanding of governmental forms and procedure of questions of policy, and creates an interest in public life and current events."

Blooming Prairie, Minn.: "I favor teaching civics as a separate course principally because I consider it of enough importance to warrant such recognition and also because if it is made subordinate

to some other subject, less thorough work will be done and the student's interest in the subject will be of a rambling and unprofitable nature."

Lake Crystal, Minn.: "It would seem to me with the limited time at our disposal, better results would be had by teaching American Government as a separate subject. Our pupils are woefully ignorant in regard to American institutions, and should devote enough time to the subject to get a practical understanding of them."

Shakopee, Minn.: "The average high school pupils are not capable of grasping more than one subject at a time. We emphasize the growth of our institutions when studying history and the administration of government in civics."

Amity, Ark.: "Because of its importance and the amount of collateral reading that may be done by the study of important topics. The subject is so broad and the literature so full that the student can find more than he can do even when he takes it as a separate study. It is one of the most serious defects of our schools that the study of American Government has been so long neglected."

Vidalia, Georgia: "Because the teacher is better prepared to present the subject in a simple, forcible and concise manner."

Bolton, Miss.: "I believe that the low standard of political life can be raised by the practical teaching of American Government in the schools."

Columbia, Mo.: "I think preparation for an intelligent exercise of the duties of citizenship is becoming of increasing importance because of the increasing complexity of governmental problems arising out of a growing complexity of economic, social and political conditions. It seems to me skill in the administration of government is not keeping pace with our rather phenomenal development in other directions. Because of this development, I think the subject demands more consideration than it can receive in a combination course in one year."

Cheraw, S. C.: "Because the pupil can concentrate his mind on each governmental principle and more easily and permanently acquire a working knowledge of its functions. It has the poorest text-books of any subject taught."

Paducah, Ky.: "I take particular pleasure in sending in the required information because I feel that the very object for which the free public schools were first established is being the last one to receive proper accentuation in the curriculum not only of the high

school but in that of the lower grades. Fitting for *citizenship in the United States* is the peculiar function of the American free public school."

A few only of the outlines of the work that are being used in the separate courses can be included. One or two will be selected from each section of the country.

Rome, Ga.: "Our work in civics is not based strictly on a textbook although we cover Peterman's *Elements of Civil Government* in class:

I. Frequent reports are made by class on topics as:

1. A detailed study of the powers of the speaker of the house.
2. Congressional representation from your State and the membership on committees.

3. The historical antecedents of our United States Constitution.

II. Once a week (or ten days) spirited debates are prepared on subjects of value to an ordinary citizen, e.g., compulsory education, educational qualifications for electoral franchises, etc.

III. Occasional parliamentary sessions in which the class is divided into parties and motions (previously prepared) are made and discussed and handled as they would be by legislative bodies.

IV. Talks by the instructor on the Australian ballot, how a city is governed, good citizenship, etc.

V. Careful outline made by each of the students of the United States Constitution and a thorough examination required on the text of the document.

VI. State and local government is taken as a prelude to national government, about one-half of the entire time being given to those features.

VII. The aim of the course is to give the best possible comprehension of the working of the government in all its departments, and to encourage active participation in civic duties."

Crookston, Minn. "Smith's *Preparation for Citizenship* was the text used, with frequent reference to James and Sanford's *Govern-
ment in State and Nation*.

Special topics were prepared by individual students upon such themes as: The History of Tammany, The Interstate Commerce Commission, Results of the Last Election, etc. Copies of the *Prison Mirror* were obtained and reports and literature furnished by the warden of Stillwater (State Prison) furnished material for comparison of present day prison methods with the methods of the eighteenth century.

A few debates were held.

Visits to the court room (justice court) and to the polls.

We studied the primary election law, then we saw a primary election in progress. We attended political speeches prior to the state election and had a delightful time from first to last. We used the blue books a great deal, the United States Constitution itself a great deal and memorized a large part of the Declaration of Independence."

Cleveland, Ohio: "The text-book is Ashley's *American Government*. The course is entirely separate from the American History course and is almost entirely devoted to the study of political institutions and problems of the present day. The work is only in slight measure devoted to a study of the Constitution and much of the work is independent of the text-book. Some parts of the work consists of text-book recitations. Much is given in lecture form by the teacher and kept by the students in note-books. Occasional topics are investigated by certain members of the class and reported to the class. Occasionally outsiders have been secured to address the class on special topics.

County, State and township government are lightly treated, the time so saved being used for a more careful study of the national government and especially of the local city government. In this study, only a moderate portion of the time is spent on the frame work of city government, the rest being devoted to city functions and particular local problems."

ARGUMENTS FOR THE SEPARATE COURSE

The arguments advanced in support of the separate course may be summarized as follows:

1. Since the understanding of American Government is such a vital element in the education of an American citizen, the subject should be taught separately in order to emphasize and dignify it.
2. Many topics in a course in American History have no connection with government and hence if the two are presented as one subject the coherence and continuity of the course is lost; it becomes confused and rambling.
3. Many topics in government, for example, local and city government, party conventions, congressional methods, parliamentary procedure, cannot be presented connectedly and adequately in a course in history and therefore even when a combination course is taught, a separate course is still needed to teach the omitted matter.

4. The easiest and most natural way to interest a beginner in Government is not through a study of its historical origins but through a study of existing and working organs of government which may be observed in any locality.

5. The literature of government and the literature of history are so extensive and so distinct that, unless taught separately, the collateral reading cannot be done properly in either subject.

6. History is essentially a study of things accomplished and on record; government is essentially a study of things in the doing, institutions in the making, of things projected, of what ought to be done. The spirit, the purpose and the point of view are quite different and both subjects lose by being fused.

7. Finally, government should be taught separately in order to impress upon the high school student more vividly and concretely very important lessons in political ethics, such as the need for efficiency and honor in the government, the necessity for intelligence, integrity and political activity of the citizens, the voters.

These arguments might be elaborated at greater length, but enough has been said to indicate their earnestness and character. It is evident that we are considering here a different conception of the subject and a different point of view of the teacher. Many of the teachers who present a separate course are teaching something that is neither the old style "civics" nor constitutional history. They are teaching a concrete and living thing. It is nothing more nor less than a study of the State as a living acting community, adapting itself to the needs of present economic and social conditions. It is the investigation of our governmental and political machinery, its component parts and their functions. This is not merely the study of books or constitutional documents but the contemplation of existing realities, the government, the electorate, the political party, each in its activities and manifestations. Through such a course a student should have his eyes opened to observe his political environment, to become aware of the community in its public capacity, to realize that it has rights, duties, interests and that he is a unit in this larger group—a citizen. He should, in a word, become aware of the State and of its organization, the government. He will then keep himself informed on public questions. The dispatches in the press will have new meaning and interest for him.

We may conclude the discussion in these words. To teach the origin and development of political institutions is one thing; to teach

the present organization, workings and spirit of our government is a very different matter. One is historical and can be presented in a course in narrative history; the other is practical administration, a distinct and difficult subject in itself.

THE TEACHER

Having described the nature of the course which is being offered, the next thing to do is to ascertain the kind of teachers to whom the work of instruction is now entrusted. It was found difficult to gauge the preparation of the teacher, through an inquiry of this kind. The mere statement that the teacher is a college graduate and has had a number of years of experience is not a sufficient test of fitness to teach this particular subject. Under the present elective system, it is possible to obtain a college degree without having studied government or history at all. In many of the reports, the teachers, who were themselves trained in science, English, history or some other specialty protest energetically against being called upon to teach the course in government which requires a man of some experience and thorough special training.

Some significant facts can be gleaned from the reports regarding the teachers who are giving the instruction in government. In the Eastern and Mid-Western section, 118 schools report men teachers and 86 schools women teachers of the subject. In the Western section, 120 of the teachers were men and 83 were women and in 38 of the reports the blank was not filled in. In the South there were reported 78 men teachers and 76 women teachers. The principals of these schools were in many instances women, especially in the West where there were 109 women to 127 men, five not reporting. In the South, 35 schools reported women principals, 73 men and the rest failed to be specific. In the East and Mid-West, only a very few high schools have women principals, 16, to 195 presided over by men.

The proportion of women in these two positions varied greatly with States. For instance in the State of Minnesota, 77 high schools reported women principals, only 27 reported men principals, while in Massachusetts all the schools heard from had men principals. In Minnesota, 41 women were teaching government in the schools investigated, to 55 men. In Massachusetts in 28 schools the women teaching government just equalled the men, 14 to 14.

In some of the reports from all the section, there were marked

preferences for men teachers of government. In a number of cases these individual expressions of preference indicated strong convictions on the subject.

On one thing all are agreed and that is that there is the greatest need for suitably trained teachers of government. The teachers themselves recognize this fact and do not hesitate to say so. From Massachusetts to California the principals say, "Give the subject to specially trained teachers not to any one who comes along." Even a man who is well prepared in history is not necessarily equipped to teach government: Some have come to recognize that fact. A history teacher who has given no special attention to political science is apt to make the subject unduly historical and constitutional while he should interest his class in the administration and legislation of today.

No one reading the hundreds of reports from all sections of the country can fail to be impressed with the very strong demand for better trained teachers in this field. The lack of good teachers of American Government is a serious weakness in our schools. It is true that only our large city high schools can have a special teacher of the subject, who teaches nothing else. In the smaller schools the teacher must teach other things. There is no objection to his doing so provided he has the required preparation in what he attempts to teach.

In a general characterization of this sort one is apt to do violence to individual cases. It is necessary to disregard the exceptional in order to describe the general. We must remember that this characterization does not do justice to individual schools, for there are high schools in this country that are doing a high order of work in American Government under most competent teachers. In fact it is becoming more and more evident that a new type of teacher of government is appearing. He is the product of many forces now at work to better conditions in this country. There has been a marked improvement in the moral tone in the standards of efficiency and honor in the public service and an increased interest in the scientific study of the problems of government. Our universities are offering many new courses and opportunities in studying government now that were not thought of a generation ago. The specialists who are offering these courses are in many cases in very close touch with the practical administration of the government. In numerous instances, in recent years, the government has called upon these men for expert

services and advice. In fact, it is to the trained publicists and economists that the nation, the states and municipalities must look for developing the experts and skilled administrators of the future. This is being done now to a large extent as is shown by the number of these specialists employed on tax commissions, railway commissions, commissions for the control of public utilities, in the insular and foreign services and in the bureau of corporations. This new and intimate relationship between our university instructors and the public service is having a very wholesome effect upon the instruction, making it much more concrete and practical. The students of government that are being educated under the guidance of such men will in time make their influence felt in the teaching of the subject in secondary schools. They are indeed doing so already in many of these schools, as our reports indicate.

THE TEXT-BOOK

A very essential factor in the teaching of any subject is the text-book. In no one respect is the backwardness of instruction in government better indicated than in the inadequacy of our text-books. The obsolete manuals of the constitution, mere commentaries on the text of that document, are in use in a score or more of the schools reported. Then there is a type of book which is but little better than the old style manual. It is a dry, threadbare account of the organization of the government in which the barren method of the elder pedagogue is very prominent, but the official, the legislator, the party leader and their action and problems are barely hinted at. Such a book presents the merest skeleton of government with a surplus of hints to teachers, artificial questions and suggestions. It omits the functional side of government, the everyday workings of officials and departments, the problems they have to solve, the play of public opinion, the shortcomings and the merits of the public service.

A third type of book written by the historian from the historical standpoint attempts to combine American History and American Government, an undertaking which in the nature of things, cannot result in a homogeneous or effective manual. Finally there is the text-book which attempts to describe the government in operation today with a view to getting at the life of institutions and the actual operations of government. In this direction some progress has recently been made, but much creative vigor and thoughtful effort

must still be expended before there will have been attained that perfection of method and presentation which in so important a subject we have a right to expect.

The following is a partial list of text-books reported, together with the number of schools where each is in use.

Text.	West.	East and Mid-West.	South.
McCleary.....	59	12	6
James and Sanford.....	33	21	8
Fiske.....	12	20	8
Boynton.....	11	8	3
Andrews.....	9	3	5
Peterman.....	0	2	31
Hinsdale.....	7	3	15
Willoughby.....	0	6	7
Ashley.....	4	25	5
Young.....	5	9	6
Foreman.....	1	8	1
Townsend.....	4	0	3

THE LIBRARY

The library equipment of a high school may consist of a city public library besides that of the individual school. Many, even of the smaller cities, have fairly good public libraries. This does not signify however, that the high schools of these cities have access to an up-to-date collection of books on American Government. The committee attempted to get at the situation by asking each school to name its five best books on American Government and to state whether or not it had collected copies of the State Constitution, and statutes, National Constitution and statutes and government reports.

These reports indicate that our secondary school libraries are poorly equipped with materials for teaching American Government. In the West, out of a total of 241 schools reporting, 203 had a copy of the State Constitution, 211 of the Federal Constitution, 111 had the State statutes, 36 the Federal statutes and 177 had some government reports. In the South out of a total of 203 schools reporting, 143 had the State Constitution, 161 the Federal Constitution, 52 the State statutes, 25 the Federal statutes, and 133 had some government reports. In the Eastern and Mid-Western section out of a total of 217 schools reporting, 176 had a copy of the State Constitution, 185

had a copy of the Federal Constitution, 84 had the State statutes, 45 had the Federal statutes, 150 had some collection of reports.

The list of books named included in many cases the most superficial of our stock text-books, and obsolete works on history. Few of these school libraries contain the standard works on American Government. It is to be feared that the teachers in most schools have but very scanty and poorly selected libraries on the subject with which to supplement the equipment of the school. While the average high school boy may not be able to use many of the standard works to advantage, the live teacher cannot do without them. He has daily need for consulting them. Surely there is no excuse for a high school library not to have a copy of the constitutions, State and Federal, the State statutes and a good collection of municipal, State and Federal government reports of the greatest utility.

CHAPTER III

THE RECOMMENDATIONS OF THE COMMITTEE

The conclusions set forth in this chapter were agreed upon in two conferences held at Madison: the first taking place in July, 1907, and the second in August, 1908. The committee was a unit on all the essential points incorporated in these recommendations. In planning the course of instruction in government the first question that presents itself is this: "Where should instruction in American Government begin?" That the subject should be introduced in the grades before the pupil enters the high school can no longer be questioned. While this investigation was limited to the secondary schools it seemed necessary to include in these recommendations the elementary school work in this subject.

GOVERNMENT IN THE ELEMENTARY SCHOOLS

So long as more than nine-tenths of our population terminate their school training before reaching the high school, it is highly desirable that some instruction in government be given in the grades. There is no valid reason why the child should not be led to observe, to read of and to discuss the "community," how it originates, grows, what some of its organs are and the functions they perform. The subject matter is interesting, profitable in itself and ready at hand. It seems odd to us of the present day that the "community" and the govern-

ment should have been neglected so long by the school when a knowledge of such matters is so essential to intelligent citizenship. Where could the teacher find more interesting and useful topics for the language lesson or a general school exercise than the fireman, the policeman, the lamplighter, the postman, the lighthouse keeper, the life-saving station, street cleaning, garbage collection and disposal, the water supply, the emergency hospital, the quarantine for infectious diseases, election day, the parks, public baths, the schools, taxes, the men and women distinguished for their public service. Surely a lesson on the local fire department would be quite as interesting and instructive as one on a nest of spiders, or on classified mythology, and fully as inspiring.

The committee recommends that the discussion of the simple and readily observable functions and organs of local government be introduced into all the grades beginning not later than the fifth. The early instruction should take the form of observations by the class under direction of the teacher, talks or readings by the teacher, intended to add to the pupils' common stock of information accounts of happenings and experiences, etc. In the eighth grade more formal instruction in local, state and national government should be given using an elementary text and some reference books. This work might well occupy the time of a subject for one-half of the eighth year. The emphasis in the grammar grade work on government should be on local and State governments and should deal with actual projects, activities and methods of doing things rather than consist of a mere collection of lists of officers and their salaries or an analysis of the constitution. The eighth grade classes can profitably be taken by the teacher to observe a session of a local court, city council, convention or polling place. Simple rules of parliamentary procedure can be explained and practiced.

For this work the essential thing is a teacher who understands and appreciates the subject and knows the community. The teacher needs a small collection of well chosen books, some current magazines and newspapers and the latest local official reports and bulletins.

There is no reason why a school should not have a good working collection of books and materials on government for the teacher's use. A library equipment for this work is essential for the teacher even if it be little used by the pupils.

The early lessons need not be introduced as a distinct subject of instruction. They may be used to supply material for language

lessons, or be given in connection with work in local geography. The relation of the subject to history in the grades may well be the reverse of that in the high school and college. While in the advanced work the study of present day government logically must come as a culmination to a study of European and American History. In the beginning lessons the subject of government should precede history. For if the past history of the nation is to be made real the child must approach the study with some clear, though elementary, ideas of the present government and activities of the community in which he lives. Without some notions of the local community of which he is a member, the history of the past must remain vague and unreal.

AMERICAN GOVERNMENT IN THE HIGH SCHOOL

In any system of schools where the subject has been properly treated in the grades, it is a simple task to plan the work for the high school. American Government should follow upon the work in history and should be a required study to occupy at least five recitations per week for one-half of the fourth year, or three recitations per week for that entire year. This is the minimum time which should be given to the subject. Some high schools are now devoting a full year to it with profit.

In case the subject has not been taught in the grades, and especially in towns where many boys drop out of the high school before reaching the fourth year, it is highly desirable to offer an elementary course in government in the first or second years, so as to place it within reach of the greatest possible number. In the larger city high schools this elementary course can be offered as an additional elective without serious inconvenience.

There may be wide differences of opinion as to what constitutes an education, but surely these three things are essential:

A reasonable facility in the use of our country's language, including an acquaintance with its best literature; a reasonable comprehension of the practical workings of our country's government; and a fair understanding of its past history.

Any community which supports a system of schools out of public funds raised by taxation, has a right to expect and should demand that much of every high school graduate. In no case should the courses in the high school be so planned as to bar a student, while pursuing any particular course, from taking the subject of American

Government at some time. It is important that American Government be taught as a distinct subject in the high school. The attempt to sandwich the subject in with history has proved a failure. The study of government needs to be emphasized and dignified with a distinct place on the program. It is too important and too complex a subject to be made secondary to any other. Place the study of American Government on its own footing and give it the same chance as any other subject which occupies an important and distinctive field and better results will be obtained. The subject of government now has specialists of its own and a distinctive literature increasing rapidly each year. In a comparatively short time, judging from the present trend of educational progress and opinion, there will be no patience with any sort of a makeshift course in the subject. Only the very best direct treatment of government will satisfy the demand.

There are two methods of presenting the subject: one begins with the local government near at hand and proceeds to the study of the State and then to the national government. The other begins with the national government and proceeds to the State and local. In a high school course either plan may be adopted. If the school is situated in one of the older commonwealths, the first plan seems more logical and natural, while if situated in one of the newer states, admitted long after the formation of the union, and governed meanwhile as a territory under acts of congress, the second plan may for an equally good reason be adopted.

In any case, the emphasis should be placed on the government of the locality, especially the city, the town and the State with which the citizen comes in contact most frequently. It is the local and state governments which largely determine the conditions under which we live. The attention of the future citizens should be directed, therefore, primarily to a study of their organization and their problems, rather than to the national government as the text-books have done in the past.

SPECIALLY TRAINED TEACHERS

The greatest need today is more teachers especially trained in political science. There is a crying need for them from one end of the country to the other. No one understands this need better than the teachers themselves. The practice of attaching the subject of government to the duties of any high school teacher on the force, whose time is not fully taken up with a multitude of other things, is

universally condemned. The investigation of the committee indicates that there is a pronounced dissatisfaction among high school teachers with this easy-going practice. The demand is distinctly for teachers especially fitted to teach this important subject.

Only the largest and best equipped high schools can afford to retain a special instructor in the subject who gives all or most of his time to it; nor is such an arrangement essential. The teacher need not confine his attention to this one subject. It may not even be desirable that he should do so. In most cases, he can give courses in history, commercial law, economics and other subjects to advantage. The essential thing is that he has had good instruction in political science in a college or university of recognized standing, or has gained his training through a long experience, and special study. To be more specific, the high school instructor in the subject needs at least to be familiar with general American Government, Municipal Government, Comparative European Government, Political Parties, Elementary Law, Public Finance and Colonial Administration to be fully equipped for his work. A teacher who has elected most of his work in history and none in political science for his college course is not equipped to teach government in the high school, without further training and experience; nor is a teacher who has elected most of his work in political science and none in history equipped to teach history in the high school. The literature of these two branches of the social sciences, their points of view, aims and their methods are distinct now and are getting more so as specialization advances. College and university departments of political science are being established everywhere and over five thousand students are annually in attendance on these courses. The effect of such work is certainly to be felt in all the schools.

COLLEGE ENTRANCE

The entrance conditions of every university should allow credit for at least one-half to one unit of American Government. Where entrance examinations are given the questions should be so framed as to test, not merely memory work, but also the understanding of the actual workings of governmental organs and information on current public questions. The subject should not be obscured by including it with American History as is now done in the announcements of many of our universities. Where a university makes American Government a requirement for entrance, as a few now do, the

study of the subject is thereby directly stimulated in all the secondary schools tributary to that university. In the opinion of the committee the subject should ultimately be required for college entrance. At least no university should frame its entrance conditions so as to discriminate against American Government by allowing no credit for it while giving credit to the study of ancient or foreign institutions.

THE TEACHER'S TRAINING

Another matter of vital importance is the proper training of teachers of government. The subject should receive its due proportion of time in the training schools for teachers and in teachers' institutes. A number of States now make a knowledge of the subject an essential requirement in qualifying for any teaching position in the public schools. Such a provision in the law regulating the qualification of teachers is reasonable and is a very direct way of stimulating instruction in the subject.

THE TEXT-BOOK

The committee has found no one text-book that deserves mention above all others. Certain general recommendations, however, may prove useful as a guide in the selection of a text.

First, avoid the book that consists of clauses of the Constitution with comments thereon. This style of manual is obsolete and wholly objectionable. It represents the first attempt at text-book making for the subject of government. Such a book never was a good text and at this late day is not to be tolerated.

Second, avoid the book that is in large part historical or an attempt to correlate history and government in one course. This type of book is confusing and distracting to the beginner. It attempts to present two subjects in one text when either alone is complete and difficult enough.

Third, avoid the book that gives the larger portion of its space to the national government and relegates the State government with its rural and urban subdivisions to a few general chapters. In some books of this sort, only the most obvious features of state and local government are presented. Such a treatment is entirely unsatisfactory.

Fourth, avoid the book that treats of a multitude of scattered

subjects in Economics, Sociology, Statistics, Commercial law, besides American Government. Such a text is too disconnected.

The proper text is one which consists of two parts: one devoted to State and local government in a particular State, including some comparisons with other States and another part treating of national government. Such a book deals quite as much with actual practice, with the daily workings of government, its successes and its failures, its achievements in the past and its projects for the future as with formal organization. Government should be presented as a dynamic force, not as a static condition. The student should leave the subject with the impression that our government is a growing, developing system of institutions which is being molded by men and the force of circumstances: that the responsibility of improving and perpetuating these institutions rests with each and every citizen. Such a book will quicken the conscience and arouse the interest of the youthful citizen and prepare him for future duties and responsibilities.

Improvements are being made at a more rapid rate now than ever before in the text-books on government. With the right kind of teacher, an imperfect manual may give quite as good results as one wholly acceptable, because imperfections, provided the book be sound in the main, develop an alert critical habit of study which is no small gain in itself.

THE LIBRARY FOR GOVERNMENT

Every high school, whether large or small, should have as a part of its equipment a collection of books, reports, documents, current literature and legal forms for the study of government. Some of this material is primarily for the use of the teacher. No teacher can hope to keep up in this subject who does not follow the current discussions, public acts, messages and reports concerning the actual doings of government departments, officials, committees and political parties.

OBSERVATIONS OF ACTUAL GOVERNMENT

Much interest can be aroused and the hazy impressions about government can be made clear and definite by occasionally witnessing the procedure of government bodies and by encouraging the students to follow the actual workings of government by reading the newspapers and magazines. To obtain the best results such visits should be well planned beforehand. The local courts, the town

meeting, a session of the county commissioners, the city council, the State legislature, the primary election, or an election proper, a party caucus or convention, the city water works, the various city departments, may be inspected with profit. Suppose the class is to witness a trial in court: let this visit come after a careful study of the judiciary has been made, including the organization of the courts, their jurisdiction and the duty of the judge, the selection of the grand jury, petit jury and their functions, the summoning of witnesses, the attorneys and the part they take in the trial, the difference between criminal, civil and equity cases, and the function of the sheriff and the police force in the administration of justice. When the class have some knowledge of these matters beforehand the proceedings in a court room mean something. Such visits should be restricted in number, well managed, and afterwards carefully discussed in class. Often good results may be obtained by appointing a committee to look up a particular matter requiring a visit to an office or a department, and having a report made in class. Occasionally the local judge or other official may be prevailed upon to address the class or the school on some of his official functions. Such visits from officers of the government who stand high in the esteem of the community and who can talk from a wealth of experience in office bring a touch of reality to class room discussions and add zest and interest to school work. A talk of that kind to a class of boys tends to make their discussions and criticisms of public men and measures more fair and considerate and leads them to take a saner and more judicious view of public affairs. Such experiences act as a corrective for the levity sometimes inspired by the sensational discussions of public matters in the local press. Debates and discussions upon the issues of the day can be made very profitable, but these exercises should as a rule be conducted apart from the regular class work. A mock mass meeting, town meeting or legislature may, if properly directed, be a valuable aid in teaching parliamentary procedure.

These recommendations are offered by the committee to the teachers of American Government in our schools and to others interested, not in a spirit of dictation, but with a sincere desire to aid and to coöperate in the improvement of the instruction in a very important but neglected subject.

Respectfully submitted by
The Committee.

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